

I. L. R. (2010) M.P.



THE INDIAN LAW REPORTS

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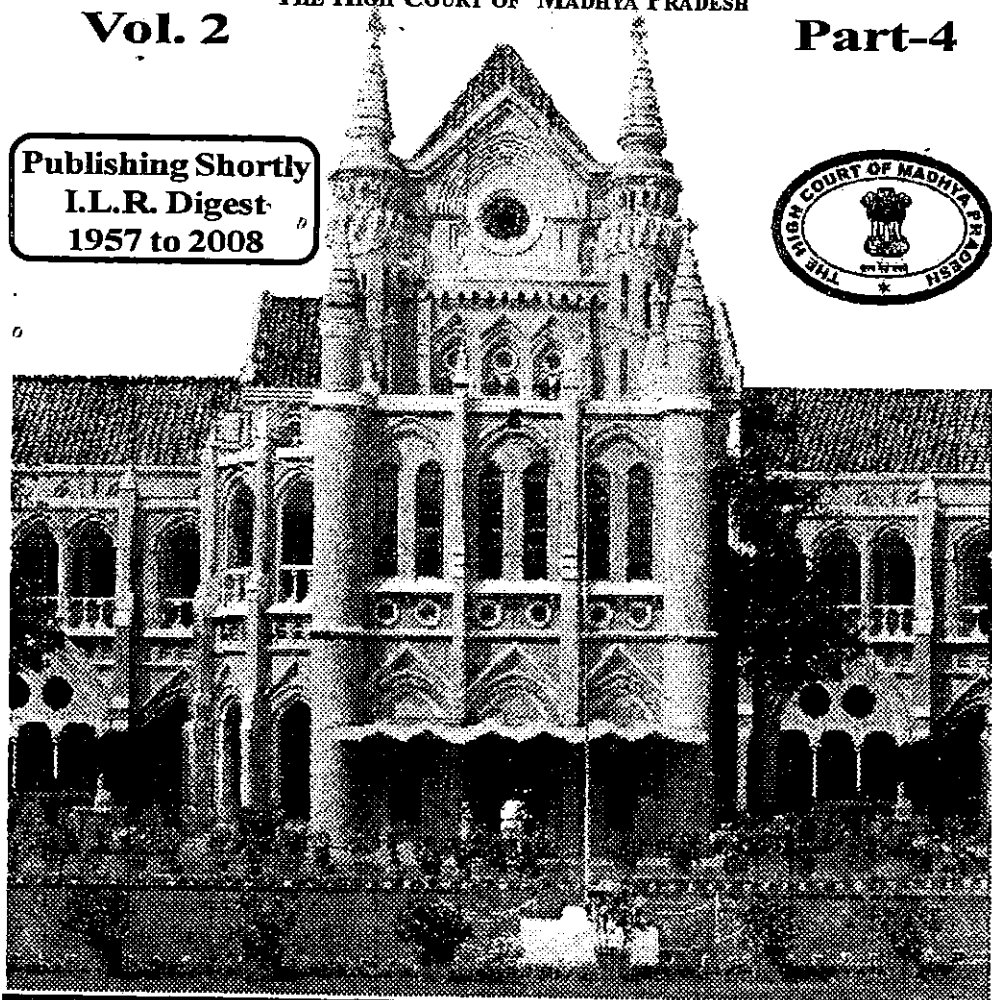
M. P. SERIES

CASES DECIDED BY THE SUPREME COURT OF INDIA AND
THE HIGH COURT OF MADHYA PRADESH

Vol. 2

Part-4

Publishing Shortly
I.L.R. Digest
1957 to 2008



April

(Single copy Rs.30)

(pp. 769 to 1020) * (All Rights Reserved)

2010

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29= 2010 (1) JLJ 221	458= 2010 (1) MPLJ 587
86= 2010 (1) JLJ 151	550= 2010 (2) MPLJ 101
310= 2010 (1) JLJ 135	581= 2010 (1) MPLJ 407
347= 2010 (1) JLJ 233	593= 2010 (1) MPLJ 415
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341= 2010 (1) MPHT 34	758= 2010 (1) MPHT 421
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646= 2010 (2) MPHT 194	347= 2010 (1) MPJR SN 21
691= 2010 (1) MPHT 124	603= 2010 (1) MPJR 264
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(Note An asterisk () denotes Note number)*

Accommodation Control Act, M.P. (41 of 1961) - Section 12 (1) - Mesne profits - Higher rate than contractual rate - Tenant found to have parted with the possession of the suit shop in favour of sub-tenant - Sub-tenant is running the business in it for last number of years - Mesne profits on higher rate than contractual rate may be awarded. [Harveer Singh v. Shri Kishan Singh Tomar] ...654

Accommodation Control Act, M.P. (41 of 1961), Sections 12(1)(a), 12(3) & 13(5) - In spite of notices and after service of summons of the Court, tenant has chosen not to deposit the rent in Court - Tenant took the risk of suffering the order of eviction - Ground u/s 12(1)(a) made out - Tenant is not entitled for protection u/s 12(3) & 13(5) as the tenant never deposited the rent as claimed by the landlord. [Sunil Kulkarni (Dr.) v. Jagdish Singh] ...939

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(b) & (f) - Right of sub-tenant to oppose eviction - Sub-tenant has no right to oppose the claim for eviction on the ground of bona fide need - He has merely a right to oppose eviction on the ground of sub-tenancy u/s 12(1)(b) of the Act. [Harveer Singh v. Shri Kishan Singh Tomar] ...654

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) - Disclaimer of title - Tenant denied title of plaintiff in written statement - Held - Even if a title of landlord is disclaimed in written statement, the ground u/s 12(1)(c) is made out. [Ram Kishan Soni v. Dr. Surendra Bahare] ...458

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) - Disclaimer of title - Tenant paid rent to plaintiff for 14 years after death of plaintiff's father - But denied the title of plaintiff in written statement - Held - Once the relationship of landlord and tenant is admitted or proved, tenant is estopped from denying the title of the landlord u/s 116 of Evidence Act - Denial of title by tenant not bona fide - Plaintiff entitled for decree u/s 12(1)(c). [Ram Kishan Soni v. Dr. Surendra Bahare] ...458

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - Alternative accommodation - Alternative accommodation should be reasonably suitable non-residential accommodation - First floor cannot be said to be an alternative suitable accommodation in connection with the shop situated on the ground floor - A shop on the first floor cannot attract the same number of customers and earn the same business as the shop on ground floor would do. [Sunil Kulkarni (Dr.) v. Jagdish Singh] ...939

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - Bona fide need of a shop - During pendency of appeal, plaintiff acquired vacant possession of identical adjacent shop - After remand, plaintiff pleaded that adjacent shop is too small for his business - Trial Court gave a finding

(Note An asterisk () denotes Note number)*

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41) - धारा 12 (1) - अंतःकालीन लाम - संविदात्मक दर से अधिक दर - भाड़ेदार द्वारा उपभाड़ेदार के पक्ष में वादग्रस्त दुकान का कब्जा सौंपना पाया गया - उपभाड़ेदार उसमें पिछले कई वर्षों से कारोबार कर रहा है - संविदात्मक दर से अधिक दर पर अंतःकालीन लाम अधिनिर्णीत किया जा सकता है। (हरवीर सिंह वि. श्री किशन सिंह तोमर) ...654

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराएँ 12(1)(ए), 12(3) व 13(5) - सूचना पत्रों के बावजूद और न्यायालय के समन की तामील के बाद भी किरायेदार ने न्यायालय में किराया जमा नहीं किया - किरायेदार ने बेदखली का आदेश होने देने का जोखिम उठाया - धारा 12(1)(ए) के अन्तर्गत आधार बना - किरायेदार धारा 12(3) और 13(5) के अन्तर्गत संरक्षण का हकदार नहीं, क्योंकि किरायेदार ने कभी किराया जमा नहीं किया, जैसा भू स्वामी द्वारा दावा किया गया है। (सुनील कुलकर्णी (डॉ.) वि. जगदीश सिंह) 939

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(बी) व (एफ) - बेदखली का विरोध करने का उपभाड़ेदार का अधिकार - उपभाड़ेदार को वास्तविक आवश्यकता के आधार पर बेदखली के दावे का विरोध करने का कोई अधिकार नहीं है - उसे केवल अधिनियम की धारा 12(1)(बी) के अन्तर्गत उपभाड़ेदारी के आधार पर बेदखली का विरोध करने का अधिकार है। (हरवीर सिंह वि. श्री किशन सिंह तोमर) ...654

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(सी) - स्वत्व से इंकार - किरायेदार ने लिखित कथन में वादी के स्वत्व से इंकार किया - अभिनिर्धारित - यद्यपि लिखित कथन में भूस्वामी के स्वत्व से इंकार किया गया हो, धारा 12(1)(सी) के अन्तर्गत आधार गठित हो जाता है। (राम किशन सोनी वि. डॉ. सुरेन्द्र बेहरे) ...458

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(सी) - स्वत्व से इंकार - किरायेदार ने वादी के पिता की मृत्यु के बाद वादी को 14 वर्ष तक किराया अदा किया - किन्तु लिखित कथन में वादी के स्वत्व से इंकार किया - अभिनिर्धारित - जब एक बार भूस्वामी और किरायेदार का सम्बन्ध स्वीकार कर लिया जाता है या साबित हो जाता है, तब किरायेदार साक्ष्य अधिनियम की धारा 116 के अन्तर्गत भूस्वामी के स्वत्व से इंकार करने से विवक्षित हो जाता है - किरायेदार द्वारा स्वत्व से इंकारी सद्भावी नहीं - वादी धारा 12(1)(सी) के अन्तर्गत डिक्री का हकदार। (राम किशन सोनी वि. डॉ. सुरेन्द्र बेहरे) ...458

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) - वैकल्पिक स्थान - वैकल्पिक स्थान युक्तियुक्त रूप से उपयुक्त अनिवार्य स्थान होना चाहिए - भू-तल पर स्थित दुकान की तुलना में प्रथम तल को उपयुक्त वैकल्पिक स्थान नहीं कहा जा सकता - प्रथम तल पर स्थित दुकान उतने ग्राहकों को आकर्षित नहीं कर सकती और उतना व्यवसाय अर्जित नहीं कर सकती जितना कि भू-तल पर स्थित दुकान करेगी। (सुनील कुलकर्णी (डॉ.) वि. जगदीश सिंह) 939

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) - दुकान की वास्तविक आवश्यकता - अपील के विचाराधीन रहते हुए वादी ने निकटवर्ती समरूप दुकान का रिक्त कब्जा प्राप्त किया - प्रतिप्रेषण के बाद, वादी ने अभिवचन किया कि निकटवर्ती दुकान उसके कारोबार के लिए बहुत छोटी है - विचारण न्यायालय ने निष्कर्ष दिया कि निकटवर्ती दुकान आकार

that the adjacent shop is equal in size & dimension and the alleged need ceased to be bona fide - Lower Appellate Court granted a decree that landlord needs both shops for his business - Held - Lower Appellate Court's judgment is beyond pleadings & proof and is based on surmises & conjecture - Appeal allowed. [Ikraar Mohammad v. Isub Khan] ...447

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - Bona fide need - Plaintiff claiming ownership on the basis of Will - Defendant's plea that in absence of examination of attesting witnesses, due execution of the Will has not been proved - Held - In eviction suit, the question of title, if disputed, may incidentally be gone into - Tenant paying rent to plaintiff for 14 years after death of plaintiff's father - Even in absence of examination of attesting witnesses of the Will, it cannot be said that plaintiff has failed to prove his ownership - Therefore, not open to tenant to question the validity of Will. [Ram Kishan Soni v. Dr. Surendra Bahare] ...458

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - Bona fide need - Plaintiff needed the suit premises for providing facilities of Coloured Doppler and TMT - Defendant's plea that the plaintiff cannot handle the TMT and Doppler Test as he is not an expert in that branch - Held - Plaintiff can hire the services of expert for conducting the test of TMT and Coloured Doppler - Plaintiff's need genuine - Entitled for decree u/s 12(1)(f). [Ram Kishan Soni v. Dr. Surendra Bahare] ...458

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - Bona fide need - Plaintiff was born and brought up at Indore - Plaintiff shifted to Bhilai because of his job - He retired from service - He requires the suit accommodation for starting of Computer Classes - Evidence unrebutted - Though in cross-examination plaintiff admitted that he is still in occupation of the house allotted by his employer at Bhilai - It cannot be said that plaintiff is making a false claim of bona fide need just to evict the tenant. [Sunil Kulkarni (Dr.) v. Jagdish Singh] ...939

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f), Civil Procedure Code, 1908, Order 6 Rule 17 - Amendment after commencement of trial - Permissibility - Suit for eviction at the stage of defendant evidence - Plaintiff executed lease deed of adjacent shop - Immediately thereafter defendant sought amendment in written statement - Held - Subsequent event has occurred after commencement of trial and application for amendment filed with due diligence - Trial Court erred in exercising its jurisdiction in rejecting application - Petition allowed. [Kamla Bai (Smt.) v. Smt. Preeti Raizada] ...603

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - Plaintiff filed a suit for bona fide need of his son - Prior to the institution of suit, suit shop was allotted to the son in partition - After death of plaintiff,

और लम्बाई-चौड़ाई में समान है और कथित आवश्यकता वास्तविक नहीं रही है - निम्न अपीलीय न्यायालय ने डिक्री प्रदान की कि भूस्वामी को अपने कारोबार के लिए दोनों दुकानों की आवश्यकता है - अभिनिर्धारित - निम्न अपीलीय न्यायालय का निर्णय अभिवचनों और सबूत के परे है तथा अनुमानों और अंदाज पर आधारित है - अपील मंजूर। (इकरार मोहम्मद वि. ईसूब खान) ...447

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) - वास्तविक आवश्यकता - वादी ने वसीयत के आधार पर स्वामित्व का दावा किया - प्रतिवादी का अभिवचन कि अनुप्रमाणक साक्षियों की परीक्षा के अभाव में वसीयत का सम्यक् निष्पादन साबित नहीं हुआ है - अभिनिर्धारित - बेदखली के बाद में, स्वत्व का प्रश्न; यदि विवादित किया जाए, आनुषंगिक रूप से देखा जा सकता है - किरायेदार ने वादी के पिता की मृत्यु के बाद वादी को 14 वर्ष तक किराया अदा किया - वसीयत के अनुप्रमाणक साक्षियों की परीक्षा के अभाव में भी यह नहीं कहा जा सकता कि वादी अपना स्वामित्व साबित करने में असफल हो गया है - इसलिए किरायेदार वसीयत की विधिमन्यता को चुनौती देने के लिए स्वतंत्र नहीं है। (राम किशन सोनी वि. डॉ. सुरेन्द्र बेहरे) ...458

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) - वास्तविक आवश्यकता - वादी को कलर डॉप्लर और टीएमटी की सुविधाएँ मुहैया कराने के लिए वादग्रस्त मवन की आवश्यकता - प्रतिवादी का अभिवचन कि वादी टीएमटी और कलर डॉप्लर का टेस्ट नहीं कर सकता क्योंकि वह उस शाखा में विशेषज्ञ नहीं है - अभिनिर्धारित - वादी टीएमटी और कलर डॉप्लर का टेस्ट करने के लिए विशेषज्ञ की सेवाएँ किराये पर ले सकता है - वादी की आवश्यकता वास्तविक - धारा 12(1)(एफ) के अन्तर्गत डिक्री का हकदार। (राम किशन सोनी वि. डॉ. सुरेन्द्र बेहरे) ...458

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) - वास्तविक आवश्यकता - वादी का जन्म और पालन-पोषण इन्दौर में हुआ - वादी नौकरी के कारण मिलाई स्थानांतरित हो गया था - वह सेवानिवृत्त हो चुका है - उसे वादग्रस्त स्थान की कम्प्यूटर कक्षाएँ प्रारम्भ करने के लिए आवश्यकता - साक्ष्य अखण्डित - यद्यपि वादी ने प्रतिपरीक्षा में यह स्वीकार किया कि वह अभी तक मिलाई में उसके नियोक्ता द्वारा आवंटित मकान के अधिभोग में है - यह नहीं कहा जा सकता कि वादी मात्र किरायेदार को बेदखल करने के लिए वास्तविक आवश्यकता का मिथ्या दावा कर रहा है। (सुनील कुलकर्णी (डॉ.) वि. जगदीश सिंह) ...939

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ), सिविल प्रक्रिया संहिता, 1908, आदेश 6 नियम 17 - विचारण प्रारम्भ होने के बाद संशोधन - अनुज्ञेयता - बेदखली का वाद प्रतिवादी साक्ष्य के प्रक्रम पर - वादी ने निकटवर्ती दुकान का पट्टा विलेख निष्पादित किया - उसके तुरन्त बाद प्रतिवादी ने लिखित कथन में संशोधन चाहा - अभिनिर्धारित - विचारण प्रारम्भ होने के बाद पश्चात्वर्ती घटनाक्रम घटित हुआ और सम्यक् तत्परता से संशोधन के लिए आवेदन पेश किया गया - विचारण न्यायालय ने आवेदन खारिज करने में अपनी अधिकारिता का प्रयोग करने में त्रुटि की - याचिका मंजूर। (कमला बाई (श्रीमति) वि. श्रीमति प्रीति रायजादा) ...603

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) - वादी ने अपने पुत्र की वास्तविक आवश्यकता के लिए वाद पेश किया - वाद संस्थित किये जाने के पूर्व वादग्रस्त दुकान विभाजन में पुत्र को आवंटित की गयी - वादी की मृत्यु के बाद पुत्र को वादी के स्थान पर

son is brought on record in place of plaintiff - Bona fide need is found proved and decree of eviction on ground u/s 12(1)(f) passed - Held - Decree cannot be interfered with at the instance of sub-tenant that the original plaintiff was not competent to represent the estate at the time of institution of suit. [Harveer Singh v. Shri Kishan Singh Tomar] ...654

Accommodation Control Act, M.P. (41 of 1961), Section 13(1) - Mesne profit higher than contractual rate - Permissibility - Appeal or revision preferred by a tenant against order or decree of eviction passed under the Act - It is open to the appellate or revisional Court to stay the execution of the order or the decree on terms including a direction to pay monthly rent at a rate higher than the contractual rent. [National Garage (M/s.) v. Rajvardhan Singhai] ...467

Accommodation Control Act, M.P. (41 of 1961), Section 23-J - Plaintiff was a landlord of a special category as mentioned u/s 23-J - Plaintiff has filed the suit u/s 12(1)(a) & (f) before Civil Court - Suit cannot be dismissed for want of jurisdiction - Reasons mentioned. [Sunil Kulkarni (Dr.) v. Jagdish Singh] ...939

Agricultural Warehouse Act, M.P. 1947 (1 of 1948), Section 3, Krishi Upaj Mandi Adhiniyam, M.P. 1972, Sections 31 & 32 - Licence for carrying on business or for operating in market area - The two Acts are totally different and operate in different areas - One Act provides for storing and proper supervision & control and other Act provides for better regulation of buying and selling of agricultural produce - Licence holder under Act of 1947 would not be protected from the clutches of Ss. 31 & 32 of Act of 1972 - Notice of Mandi Samiti to petitioner for getting licence u/s 32 of the Act of 1972 held valid - Appeal dismissed. [Jai Baba Devpuri Warehouse, Morena (M/s) v. State of M.P.] ...335

Arbitration and Conciliation Act (26 of 1996), Section 9, Madhyastham Adhikaran Adhiniyam, M.P. 1983, Section 7(1) - Scope - The 1983 Act and the 1996 Act can be harmonised by holding that the 1983 Act only applies where there is no arbitration clause but it stands impliedly repealed by the 1996 Act where there is an arbitration clause - Dispute relating to works contract and agreement contains arbitration clause - Application u/s 9 of 1996 Act was maintainable. [Va Tech Escher Wyass Flovel Ltd. v. M.P.S.E. Board] SC...769

Arbitration and Conciliation Act (26 of 1996), Section 9 - Scope - The Act only applies where there is an arbitration clause, but it does not apply where there is none - The Act covers all kind of disputes including the dispute relating to works contract. [Va Tech Escher Wyass Flovel Ltd. v. M.P.S.E. Board] SC...769

Arbitration and Conciliation Act (26 of 1996), Section 11(3)(6) -

अभिलेख पर लाया गया — वास्तविक आवश्यकता साबित पायी गयी और धारा 12(1)(एफ) के अन्तर्गत आधार पर बेदखली की डिग्री पारित की गयी — अभिनिर्धारित — उपमाड़ेदार के इस अनुरोध पर कि वाद के संस्थापन के समय मूल वादी सम्पदा का प्रतिनिधित्व करने के लिए सक्षम नहीं था, डिग्री में हस्तक्षेप नहीं किया जा सकता। (हरवीर सिंह वि. श्री किशन सिंह तोमर) ...654

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 13(1) — संविदात्मक दर से अधिक अन्तःकालीन लाभ — अनुज्ञेयता — किरायेदार द्वारा अधिनियम के अन्तर्गत पारित बेदखली के आदेश या डिग्री के विरुद्ध अपील या पुनरीक्षण पेश — अपीलीय या पुनरीक्षण न्यायालय ऐसे निबंधनों पर जिनमें संविदात्मक किराये से अधिक दर से मासिक किराया अदा करने का निदेश सम्मिलित हो, आदेश या डिग्री का निष्पादन रोकने के लिए स्वतंत्र है। (नेशनल गेरेज (मे.) वि. राजवर्धन सिंघई) ...467

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23-जे — वादी धारा 23-जे के अन्तर्गत यथा उल्लिखित विशेष प्रवर्ग का भूस्वामी था — वादी ने धारा 12(1)(ए) व (एफ) के अन्तर्गत सिविल न्यायालय के समक्ष वाद प्रस्तुत किया — अधिकारिता के अभाव में वाद खारिज नहीं किया जा सकता — कारण उल्लिखित। (सुनील कुलकर्णी (डॉ.) वि. जगदीश सिंह) 939

कृषि गोदाम अधिनियम, म.प्र. 1947, (1948 का 1), धारा 3, कृषि उपज मण्डी अधिनियम, म.प्र. 1972, धाराएँ 31 व 32 — मण्डी क्षेत्र में कारोबार करने या संचालित करने के लिए लायसेंस — दोनों अधिनियम पूर्णतः भिन्न हैं और भिन्न-भिन्न क्षेत्रों में प्रवर्तित होते हैं — एक अधिनियम संग्रहण और समुचित पर्यवेक्षण एवं नियंत्रण का उपबंध करता है तथा दूसरा अधिनियम कृषि उत्पाद के क्रय और विक्रय के बेहतर विनियमन का उपबंध करता है — 1947 के अधिनियम के अन्तर्गत लायसेंस धारक, 1972 के अधिनियम की धारा 31 व 32 के नियंत्रण से संरक्षित नहीं होगा — 1972 के अधिनियम की धारा 32 के अन्तर्गत लायसेंस प्राप्त करने के लिए मण्डी समिति का याची को सूचनापत्र विधिमान्य ठहराया गया — अपील खारिज। (जय ब्राबा देवपुरी वेयरहाउस, मुरैना (मे.) वि. म.प्र. राज्य) ...335

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 9, माध्यस्थम् अधिकरण अधिनियम, म.प्र. 1983, धारा 7(1) — विस्तार — यह अभिनिर्धारित करते हुए अधिनियम 1983 और अधिनियम 1996 एकीभूत किये जा सकते हैं कि अधिनियम 1983 केवल वहाँ लागू होगा जहाँ कोई माध्यस्थम् खंड नहीं है, किन्तु जहाँ माध्यस्थम् खंड है वहाँ अधिनियम 1983 अधिनियम 1996 द्वारा विवक्षित रूप से निरसित हो गया है — संकर्म संविदा सम्बन्धी विवाद और करार में माध्यस्थम् खंड अंतर्विष्ट — अधिनियम 1996 की धारा 9 के अन्तर्गत आवेदन पोषणीय। (वा टेक ऐशर व्यास फलोवेल लि. वि. एम.पी.एस.ई. बोर्ड) SC...769

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 9 — विस्तार — अधिनियम केवल वहाँ लागू होता है जहाँ माध्यस्थम् खंड है, परन्तु यह वहाँ लागू नहीं होता जहाँ कुछ नहीं है — अधिनियम में संकर्म संविदा सम्बन्धी विवाद सहित सभी प्रकार के विवाद अंतर्विष्ट हैं। (वा टेक ऐशर व्यास फलोवेल लि. वि. एम.पी.एस.ई. बोर्ड) SC...769

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(3)(6) — मध्यस्थ की

Appointment of Arbitrator - Without taking to recourse to the procedure already agreed to between the parties in the agreement, application directly filed before Court for appointment of an Arbitrator - Held - To take recourse to the procedure contemplated in the agreement itself, is a general rule - Appointing an independent Arbitrator is an exception to be resorted to for valid reasons - No valid and justifiable reason for deviating from the general rule is pointed out - It is not proper to appoint an independent Arbitrator as the same would be contrary to the well settled principle laid down by the Supreme Court in the case of Northern Railway Administration [(2008) 10 SCC 240] - Application is disposed of granting liberty to the parties to proceed further in the matter in accordance with the provisions of agreement. [Vidhyawati Construction Co. (M/s.) v. Union of India] ...283

Arbitration and Conciliation Act (26 of 1996), Section 11(3)(6) - Department officer - Appointed as Arbitrator - No material is adduce to show that a department officer will not act independently - Mere vague allegation unsupported by any cogent material, cannot be a ground for deviating from the general principles laid down by the Supreme Court in the case of Northern Railway Administration. [Vidhyawati Construction Co. (M/s.) v. Union of India]...283

Arbitration and Conciliation Act (26 of 1996), Section 41 - Bank Guarantee - Invocation - Permissibility - To grant injunction powers of the Court - Held - Court cannot issue injunction u/s 41 of the Act r/w Order 39 Rule 1 & 2 CPC restraining the principal from invoking and encashing the guarantee except in cases of fraud or apprehension of irretrievable injustice to the contractor. [B.C. Biyani, Projects Pvt. Ltd. (M/s.) v. Ssangyong Engineering Constructions Company Ltd.] ...506

Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ke Vetano Ka Sanday) Adhiniyam, M.P. (20 of 1978), Sections 1(4) & 2(e) - Can an educational institution be compelled to receive grant-in-aid - Held - No, the petitioner institution cannot be forced to receive the grant-in-aid - As it is not receiving any grant from the State Government since April 2007, it does not fall within the definition of an "institution" as provided u/s 2(e) of the Adhiniyam and is, consequently, excluded from the applicability of the Adhiniyam, in view of S. 1(4) thereof. [Ayodhya Prasad Narmada Prasad Uchchatter Madhyamik Shala v. State of M.P.] ...105

Ashaskiya Shikshan Sanstha Anudan Niyam, M.P. 2008, Rule 8 - See -Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, M.P. 1983, Rule 5(3) [Ayodhya Prasad Narmada Prasad Uchchatter Madhyamik Shala v. State of M.P.] ...105

Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, M.P. 1983, Rule 5(3), Ashaskiya Shikshan Sanstha Anudan Niyam, M.P. 2008, Rule 8 - DEO appointed to operate the account of petitioner institute singly - Order

नियुक्ति - पक्षकारों के मध्य पहले से अनुबन्ध में तय प्रक्रिया का आश्रय लिये बिना मध्यस्थ की नियुक्ति के लिए आवेदन सीधे न्यायालय के समक्ष पेश किया गया - अभिनिर्धारित - अनुबन्ध में अनुध्यात प्रक्रिया का आश्रय लेना एक सामान्य नियम है - स्वतंत्र मध्यस्थ की नियुक्ति करना विधिमान्य कारणों से प्रयोग किया जाने वाला एक अपवाद है - सामान्य नियम से विचलित होने के लिए कोई विधिमान्य और न्यायसंगत कारण नहीं बताया गया - यह उचित नहीं है कि एक स्वतंत्र मध्यस्थ की नियुक्ति की जाए क्योंकि यह उच्चतम न्यायालय द्वारा नार्दन रेलवे एडमिनिस्ट्रेशन [(2008) 10 SCC 240] के मामले में निर्धारित सुस्थापित सिद्धांत के प्रतिकूल होगा - पक्षकारों को अनुबन्ध के उपबंधों के अनुसार मामले में आगे कार्यवाही करने की स्वतंत्रता देते हुए आवेदन का निपटारा किया गया। (विद्यावती कंस्ट्रक्शन कं. (मे.) वि. यूनियन ऑफ इंडिया) ...283

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(3)(6) - विभाग अधिकारी - मध्यस्थ के रूप में नियुक्त - यह दर्शाने के लिए कोई सामग्री पेश नहीं की गई कि विभाग अधिकारी स्वतंत्र रूप से कार्य नहीं करेगा - किसी तर्कपूर्ण सामग्री से असमर्थित केवल अस्पष्ट अभिकथन, उच्चतम न्यायालय द्वारा नार्दन रेलवे एडमिनिस्ट्रेशन [(2008) 10 SCC 240] के मामले में निर्धारित सामान्य सिद्धांतों से विचलित होने का आधार नहीं हो सकता है। (विद्यावती कंस्ट्रक्शन कं. (मे.) वि. यूनियन ऑफ इंडिया) ...283

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 41 - बैंक गारंटी - अवलंब - अनुज्ञेयता - व्यादेश अनुदत्त करने की न्यायालय की शक्तियाँ - अभिनिर्धारित - न्यायालय कपट या ठेकेदार को अपूरणीय अन्याय की आशंका के मामलों के सिवाय प्रिंसीपल को गारंटी का अवलंब लेने और उसे भुनाने से निषेधित करते हुए अधिनियम की धारा 41 सहपठित सि. प्र.सं. के आदेश 39 नियम 1 व 2 के अन्तर्गत व्यादेश जारी नहीं कर सकता। (बी.सी. बियानी प्रोजेक्ट्स प्रा.लि. (मे.) वि. सेंग्यांग इंजीनियरिंग कन्स्ट्रक्शन कं.लि.) ...506

अशासकीय शिक्षण संस्था (अध्यापकों तथा अन्य कर्मचारियों के वेतनों का संदाय) अधिनियम, म.प्र. (1978 का 20), धाराएँ 1(4) व 2(ई) - क्या किसी शैक्षणिक संस्था को सहायता अनुदान प्राप्त करने के लिए विवश किया जा सकता है - अभिनिर्धारित - नहीं, याची संस्था को सहायता अनुदान प्राप्त करने के लिए बाध्य नहीं किया जा सकता - चूंकि वह राज्य सरकार से अप्रैल 2007 से कोई अनुदान प्राप्त नहीं कर रही है, वह अधिनियम की धारा 2(ई) के अन्तर्गत उपबंधित "संस्था" के अन्तर्गत नहीं आती है और परिणामतः अधिनियम के लागू होने से उसकी धारा 1(4) को श्रुतिगत रखते हुए अपवर्जित है। (अयोध्या प्रसाद नर्मदा प्रसाद उच्चतर माध्यमिक शाला वि. म.प्र. राज्य) ...105

अशासकीय शिक्षण संस्था अनुदान नियम, म.प्र. 2008, नियम 8 - देखें - अशासकीय शिक्षण संस्था (संस्थागत निधि) नियम, म.प्र. 1983, नियम 5(3) (अयोध्या प्रसाद नर्मदा प्रसाद उच्चतर माध्यमिक शाला वि. म.प्र. राज्य) ...105

अशासकीय शिक्षण संस्था (संस्थागत निधि) नियम, म.प्र. 1983, नियम 5(3), अशासकीय शिक्षण संस्था अनुदान नियम, म.प्र. 2008, नियम 8 - जिला शिक्षा अधिकारी अकेले याची संस्था का लेखा संचालित करने के लिए नियुक्त - आदेश को चुनौती - अभिनिर्धारित

challenged - Held - Upon repeal of the Rules, 1983 by the Niyam, 2008, the State authorities could not have passed any order under the repealed Rule 5(3) conferring power on the DEO to operate the account of the petitioner institution singly by the impugned order dated 22.10.2008 and those proceedings stood repealed and were not saved by Rule 8 of the Rules, 2008. [Ayodhya Prasad Narmada Prasad Uchchatter Madhyamik Shala v. State of M.P.] ...105

Central Civil Services (Classification, Control and Appeal) Rules, 1965, Rule 10(6) & 10(7) [Inserted by amendment w.e.f. 02.06.2004] - Suspension - Review of suspension order - As per sub-rule (6), order of suspension would not survive after period of 90 days unless it is extended after review - Respondent suspended on 10.08.2002 - Case of respondent reviewed on 20.10.2004 - Held - As per amended rules, as review committee was not constituted and review had not been conducted within 90 days - Subsequent review could not revive the order which had already become invalid - Appeal dismissed. [Union of India v. Dipak Mali] SC...547

Civil Courts Rules, M.P. 1961, Rule 110-A & 110-B - See - Civil Procedure Code 1908, Section 151 & Order 8 Rule 1 [Girwar Singh v. Jhanak Singh] ...442

Civil Procedure Code (5 of 1908), Section 24 - Application for transfer of case on the ground that lower appellate Court had already given findings and there would be probability that same findings will be maintained despite remand - In the order of remand, the High Court set-aside the judgment on the basis of consent of parties - Held - Direction of the High Court to decide all the issues warrants hearing from the judge who has not prejudged the issues - Prayer for transfer of case on judicial side cannot be accepted - However, High Court directed case may be transferred on administrative basis. [Vishnu Goyal v. Smt. Jyoti Sharma] ...269

Civil Procedure Code (5 of 1908), Sections 115 proviso & 24 - Finally disposed of the suit or proceedings - Revision against order rejecting application for transfer of suit - Order, if had been passed in favour of applicant, would have disposed of proceeding for transfer - Revision maintainable. [Vishnu Goyal v. Smt. Jyoti Sharma] ...269

Civil Procedure Code (V of 1908), Section 115 - See - Specific Relief Act, 1963, Section 6 [Ramniwas Sharma v. Smt. Jasoda Bai] ...691

Civil Procedure Code (5 of 1908), Section 115(1), Constitution, Article 227 - Revision - Maintainability of Writ Petition or Revision - Held - All the writ petitions in which revision would lie and not writ petition directed to be converted to a revision instead of dismissing them as not maintainable. [Johra Bi v. Jageshwar] ...160

Civil Procedure Code (5 of 1908), Section 115(1), Constitution, Article 227 - Revision - Other proceedings - Meaning - Explained - Held -

— नियम, 2008 द्वारा नियम, 1983 के निरसन पर राज्य प्राधिकारी आक्षेपित आदेश तारीख 22.10.2008 द्वारा जिला शिक्षा अधिकारी को अकेले याची संस्था का लेखा संचालित करने की शक्ति प्रदान करते हुए निरसित नियम 5(3) के अन्तर्गत कोई आदेश पारित नहीं कर सकते थे और वे कार्यवाहियाँ निरसित हो गयीं और नियम, 2008 के नियम 8 द्वारा व्यावृत्त नहीं की गयीं। (अयोध्या प्रसाद नर्मदा प्रसाद उच्चतर माध्यमिक शाला वि. म.प्र. राज्य) ...105

केन्द्रीय सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, 1965 नियम 10(6) व 10(7) [02.06.2004 से संशोधन द्वारा अंतःस्थापित] — निलंबन — निलंबन आदेश का पुनर्विलोकन — उपनियम (6) के अनुसार, निलंबन का आदेश 90 दिन की कालावधि के बाद विद्यमान नहीं रहेगा जब तक वह पुनर्विलोकन के बाद बढ़ा-न दिया गया हो — प्रत्यर्थी को तारीख 10.08.2002 को निलंबित किया गया — प्रत्यर्थी के मामले का पुनर्विलोकन 20.10.2004 को किया गया — अभिनिर्धारित — संशोधित नियमों के अनुसार, चूंकि पुनर्विलोकन समिति गठित नहीं हुई थी और पुनर्विलोकन 90 दिनों के भीतर नहीं किया गया था — पश्चात्पूर्ती पुनर्विलोकन ऐसे आदेश को पुनर्जीवित नहीं कर सकता था जो अविधिमान्य हो चुका था — अपील खारिज। (यूनियन ऑफ़ इंडिया वि. दीपक माली) SC—547

सिविल न्यायालय नियम, म.प्र. 1961, नियम 110-ए व 110-बी — देखें — सिविल प्रक्रिया संहिता 1908, धारा 151 व आदेश 8 नियम 1, (गिरवर सिंह वि. झनक सिंह) ...442

सिविल प्रक्रिया संहिता (1908 का 5), धारा 24 — मामले के अंतरण के लिए आवेदन इस आधार पर कि निम्न अपीलीय न्यायालय पूर्व में निष्कर्ष दे चुका था और यह संभाव्य है कि प्रतिप्रेषण के बजावजूद वही निष्कर्ष कायम रखे जाएँ — प्रतिप्रेषण के आदेश में, उच्च न्यायालय ने पक्षकारों की सम्मति के आधार पर निर्णय अपास्त किया — अभिनिर्धारित — उच्च न्यायालय का सभी विवादकों का विनिश्चय करने का निदेश उस न्यायाधीश से सुनवाई की अपेक्षा करता है जिसने विवादकों का पूर्वनिर्णय नहीं किया है — न्यायिक पक्ष पर मामले के अंतरण की प्रार्थना स्वीकार नहीं की जा सकती — तथापि, उच्च न्यायालय ने निदेश दिया कि प्रशासनिक आधार पर मामला अंतरित किया जा सकता है। (विष्णु गोयल वि. श्रीमति ज्योति शर्मा) ...269

सिविल प्रक्रिया संहिता (1908 का 5), धाराएँ 115 परन्तुक व 24 — वाद या कार्यवाही का अंतिम रूप से निस्तारण — वाद के अंतरण के आवेदन को खारिज करने वाले आदेश के विरुद्ध पुनरीक्षण — आदेश, यदि आवेदक के पक्ष में पारित किया गया होता तो अंतरण की कार्यवाही का निस्तारण कर देता — पुनरीक्षण पोषणीय। (विष्णु गोयल वि. श्रीमति ज्योति शर्मा) ...269

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 — देखें — विनिर्दिष्ट अनुतोष अधिनियम, 1963, धारा 6, (रामनिवास शर्मा वि. श्रीमति जशोदा बाई) ...691

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115(1), संविधान, अनुच्छेद 227 — पुनरीक्षण — रिट याचिका या पुनरीक्षण की पोषणीयता — अभिनिर्धारित — सभी रिट याचिकाओं को, जिनमें पुनरीक्षण पोषणीय होगी न कि रिट याचिका, उन्हें पोषणीय न मानकर खारिज करने के बजाय पुनरीक्षण में परिवर्तित करने का निदेश दिया गया। (जोहरा बी वि. जागेश्वर) ...160

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115(1), संविधान, अनुच्छेद 227 — पुनरीक्षण — अन्य कार्यवाही — अर्थ — स्पष्ट किया गया — अभिनिर्धारित — शब्द "अन्य

Term "other proceedings" cannot be read in a narrow compass and has to be given a very wide meaning - Word "proceedings" cannot be confined to a civil proceedings alone - It has the comprehensive meaning so as to include within it all matters coming up for judicial adjudication. [Johra Bi v. Jageshwar] ...160

Civil Procedure Code (5 of 1908), Section 115(1) & Order 7 Rule 11, Constitution, Article 227 - Revision - Maintainability of Writ Petition or Revision - Held - A prayer was made to dismiss the suit as not maintainable on the ground that separate suit was not maintainable beside the objection with respect to court fees, etc. was also taken - Considering the nature of objection taken, the revision petition would be maintainable not the writ petition. [Johra Bi v. Jageshwar] ...160

Civil Procedure Code (5 of 1908), Section 115(1) & Order 7 Rule 11, Constitution, Article 227 - Revision - Maintainability of Writ Petition or Revision - Held - Dismissal of the suit was sought on the ground that there was non-joinder of the necessary party, beside suit was not properly valued, considering the nature of objection taken in rejection of plaint, the revision would be maintainable not the writ petition. [Johra Bi v. Jageshwar] ...160

Civil Procedure Code (5 of 1908), Section 115(1) & Order 7 Rule 11(b), (c), Constitution, Article 227 - Revision - Maintainability of Writ Petition or Revision - Held - Under Order 7 Rule 11 CPC order may be final at once and order would be order revisable - Once exigencies are provided in Order 7 Rule 11(b) & (c) are completed, revision would be maintainable not the writ petition - Each case has to be decided whether suit or other proceeding would have been finally disposed of in favour of the party applying for the revision. [Johra Bi v. Jageshwar] ...160

Civil Procedure Code (5 of 1908), Section 115(1) & Order 9 Rule 9, Constitution, Article 227 - Revision - Maintainability of Writ Petition or Revision - Held - An application under Order 9 Rule 9 CPC has been dismissed, appeal stands dismissed, revision would be maintainable - It would mean proceeding in S. 115(1) CPC - Writ petition cannot be said to be maintainable. [Johra Bi v. Jageshwar] ...160

Civil Procedure Code (5 of 1908), Section 115(1) & Order 9 Rule 13, Constitution, Article 227 - Revision - Maintainability of Writ Petition or Revision - Held - An application under Order 9 Rule 13 CPC was rejected by the trial Court against which miscellaneous appeals were preferred, thus, revision would be maintainable against the appellate orders which have been passed not the writ petition. [Johra Bi v. Jageshwar] ...160

Civil Procedure Code (5 of 1908), Section 151 & Order 8 Rule 1, Civil Courts Rules, M.P. 1961, Rule 110-A & 110-B - Defendant's right to file written statement closed for want of not filing it within prescribed period of 90 days - However after the right to file written statement was closed,

कार्यवाही" को संकीर्ण विस्तार में नहीं बढ़ा जा सकता और अत्यंत व्यापक अर्थ देना होगा - शब्द "कार्यवाही" को केवल सिविल कार्यवाही तक सीमित नहीं किया जा सकता - यह विस्तृत अर्थ रखता है ताकि उसके अन्तर्गत न्यायिक न्यायनिर्णयन के लिए आने वाले सभी मामलों को सम्मिलित किया जाए। (जोहरा बी वि. जागेश्वर)

...160

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115(1) व आदेश 7 नियम 11, संविधान, अनुच्छेद 227 - पुनरीक्षण - रिट याचिका या पुनरीक्षण की पोषणीयता - अभिनिर्धारित - इस आधार पर कि पृथक वाद पोषणीय नहीं था वाद पोषणीय न होने से खारिज करने की प्रार्थना की गई उसके अतिरिक्त न्यायालय फीस आदि के सम्बन्ध में आपत्ति भी ली गई - ली गई आपत्तियों की प्रकृति पर विचार करते हुए पुनरीक्षण याचिका पोषणीय होगी न कि रिट याचिका। (जोहरा बी वि. जागेश्वर)

...160

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115(1) व आदेश 7 नियम 11, संविधान, अनुच्छेद 227 - पुनरीक्षण - रिट याचिका या पुनरीक्षण की पोषणीयता - अभिनिर्धारित - वाद की खारिजी इस आधार पर नहीं गयी कि आवश्यक पक्षकार का असंयोजन था, इसके अतिरिक्त वाद का उचित मूल्यांकन नहीं किया गया, वाद के नामंजूर किये जाने में ली गई आपत्ति की प्रकृति को विचार में लेते हुए, पुनरीक्षण पोषणीय होगी न कि रिट याचिका। (जोहरा बी वि. जागेश्वर)

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सिविल प्रक्रिया संहिता (1908 का 5), धारा 115(1) व आदेश 7 नियम 11(बी), (सी), संविधान, अनुच्छेद 227 - पुनरीक्षण - रिट याचिका या पुनरीक्षण की पोषणीयता - अभिनिर्धारित - सि.प्र.सं. के आदेश 7 नियम 11 के अन्तर्गत आदेश तुरंत अंतिम हो सकता है और आदेश पुनरीक्षण योग्य आदेश होगा - जब एक बार आदेश 7 नियम 11(बी) व (सी) में उपबंधित अत्यावश्यकताएँ पूर्ण हो जाती हैं, पुनरीक्षण पोषणीय होगी न कि रिट याचिका - प्रत्येक मामले का विनिश्चय करना होगा चाहे वाद या अन्य कार्यवाही का पुनरीक्षण के लिए आवेदन करने वाले पक्षकार के हक में अंतिम रूप से निपटारा होता हो। (जोहरा बी वि. जागेश्वर)

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सिविल प्रक्रिया संहिता (1908 का 5), धारा 115(1) व आदेश 9 नियम 9, संविधान, अनुच्छेद 227 - पुनरीक्षण - रिट याचिका या पुनरीक्षण की पोषणीयता - अभिनिर्धारित - सि.प्र.सं. के आदेश 9 नियम 9 के अन्तर्गत आवेदन खारिज कर दिया गया, अपील खारिज कर दी गई, पुनरीक्षण पोषणीय होगी - इसका अर्थ सि.प्र.सं. की धारा 115(1) में कार्यवाही से होगा - रिट याचिका पोषणीय होना नहीं कही जा सकती। (जोहरा बी वि. जागेश्वर)

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सिविल प्रक्रिया संहिता (1908 का 5), धारा 115(1) व आदेश 9 नियम 13, संविधान, अनुच्छेद 227 - पुनरीक्षण - रिट याचिका या पुनरीक्षण की पोषणीयता - अभिनिर्धारित - विचारण न्यायालय द्वारा सि.प्र.सं. के आदेश 9 नियम 13 के अन्तर्गत आवेदन खारिज किया गया जिसके विरुद्ध विविध अपील पेश की गयीं, इस प्रकार, पारित किये गये अपीलीय आदेशों के विरुद्ध पुनरीक्षण पोषणीय होगी न कि रिट याचिका। (जोहरा बी वि. जागेश्वर)

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सिविल प्रक्रिया संहिता (1908 का 5), धारा 151 व आदेश 8 नियम 1, सिविल न्यायालय नियम, म.प्र. 1961, नियम 110-ए व 110-बी - प्रतिवादी का लिखित कथन पेश करने का अधिकार उसे 90 दिन की विहित कालावधि के भीतर पेश न करने के अभाव में समाप्त कर दिया गया - तथापि लिखित कथन पेश करने का अधिकार समाप्त होने के बाद, वादी द्वारा प्रतिवादी

requisite document were supplied to the defendant by the plaintiff - Held - Rule 110-A of M.P. Civil Court Rules obliges the Court to pass proper order for supply of documents which are demanded by the defendant after appearance on account of having been filed with the plaint - Trial Court's order closing thereby right to submit written statement despite demand of documents by the defendant is illegal. [Girwar Singh v. Jhanak Singh] ...442

Civil Procedure Code (5 of 1908) [As amended], Order 6 Rule 15(4) - Verification of pleadings - Written statement containing admissions duly signed and verified by the defendants and equally duly attested by the advocate - Not accompanied by affidavit - Application pointing out such defect was not filed in the trial Court - Defendant not objecting but allowed the trial Court to proceed with such written statement - Held - Written statement not invalid. [Sunil Kumar v. Dr. Om Prakash Garg] ...960

Civil Procedure Code (5 of 1908), Order 2 Rule 2(3) - Effect of grant of leave to file the suit for any relief so omitted - Trial Court dismissed the suit but leave was granted to file a fresh suit for damages - In appeal, High Court held that plaintiff may file a suit against defendants for damages in which the defendants would be debarred from raising the plea of limitation - Fresh suit was filed for damages - Defendants have taken the plea of limitation - Held - Previous decision has attained finality in which permission was granted to file fresh suit - The previous judgment & decree gives a right to plaintiff to maintain the suit and debar the defendant to raise the plea of limitation. [Hindustan Motors Ltd. (M/s.) v. D.R. Motors (M/s.)] ...215

Civil Procedure Code (5 of 1908), Order 5 Rule 17 & Proviso [Added by M.P.H.C.] - Service of notice - Refusal to accept summon/notice - Held - Refusal to accept summon/notice may be treated as service by virtue of proviso added in Order 5 Rule 17 in the State of M.P. when issued against special process - In case of ordinary process, affixation is to be made despite refusal. [Shivraj Singh Chauhan v. Rajendra Kumar] ...247

Civil Procedure Code (5 of 1908), Order 6 Rule 2 & Section 151, Specific Relief Act, 1963, Section 34 - Without any prayer or pleading - Decree of possession passed - Permissibility - Suit for declaration & perpetual injunction decreed - Lower appellate Court in exercise of power conferred u/s 151 CPC passed additional decree of possession - Held - In absence of pleading or prayer, decree for possession could not be granted by invoking the provision u/s 151 CPC. [Kanaklata v. Subhadra] ...433

Civil Procedure Code (5 of 1908), Order 6 Rule 4 - Pleadings - Burden of proof - The burden of establishing that the forum of choice is a forum non-convenience or the proceedings therein are oppressive or vexatious would be on the party so contending to aver and prove the same. [State Bank of India v. Bank of Ireland] ...924

को अपेक्षित दस्तावेज प्रदाय किये गये - अभिनिर्धारित - म.प्र. सिविल न्यायालय नियम का नियम 110-ए उन दस्तावेजों के प्रदाय के लिए समुचित आदेश पारित करने के लिए न्यायालय को बाध्य करता है जिनकी वादपत्र के साथ पेश किये जाने के कारण प्रतिवादी द्वारा उपसंजाति के बाद मौंग की जाती है - विचारण न्यायालय का प्रतिवादी द्वारा दस्तावेजों की मौंग के बावजूद लिखित कथन पेश करने का अधिकार समाप्त करने का आदेश अवैध है। (गिरवर सिंह वि. झनक सिंह)...442

सिविल प्रक्रिया संहिता (1908 का 5) [यथा संशोधित], आदेश 6 नियम 15(4) - अभिवचनों का सत्यापन - लिखित कथन, जिसमें स्वीकृतियाँ अंतर्विष्ट थीं, प्रतिवादियों द्वारा सम्यक् रूप से हस्ताक्षरित और संत्यापित किया गया और अधिवक्ता द्वारा समानतः सम्यक् रूप से अनुप्रमाणित किया गया - शपथपत्र सहित नहीं - विचारण न्यायालय में ऐसी त्रुटि को बताने वाला कोई आवेदन पेश नहीं किया गया - प्रतिवादी ने आपत्ति नहीं की बल्कि विचारण न्यायालय को ऐसे लिखित कथन पर कार्यवाही करने दी - अभिनिर्धारित - लिखित कथन अविधिमान्य नहीं। (सुनील कुमार वि. डॉ. ओम प्रकाश गर्ग)...960

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 2 नियम 2(3) - किसी ऐसे अनुतोष के लिए वाद पेश करने की इजाजत देने का प्रभाव जिसका लोप कर दिया गया है - विचारण न्यायालय ने वाद खारिज किया किन्तु नुकसानी के लिए नया वाद पेश करने की इजाजत दी गयी - अपील में उच्च न्यायालय ने अभिनिर्धारित किया कि वादी नुकसानी के लिए प्रतिवादियों के विरुद्ध वाद पेश कर सकता है जिसमें प्रतिवादी परिसीमा का अभिवचन करने से विवर्जित हो जायेंगे - नुकसानी के लिए नया वाद पेश किया गया - प्रतिवादियों ने परिसीमा का अभिवचन किया - अभिनिर्धारित - पूर्ववर्ती विनिश्चय, जिसमें नया वाद पेश करने की अनुमति दी गई थी, अंतिम हो गया है - पूर्ववर्ती निर्णय व डिक्री वादी को वाद चालू रखने अधिकार देता है और प्रतिवादी को परिसीमा का अभिवचन करने से विवर्जित करता है। (हिन्दुस्तान मोटर्स लि. (मे.) वि. डी.आर. मोटर्स (मे.))...215

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 5 नियम 17 व परन्तु {उच्च न्यायालय द्वारा जोड़ा गया} - सूचना की तामील - समन/सूचना का प्रतिग्रहण करने से इंकारी - अभिनिर्धारित - समन/सूचना का प्रतिग्रहण करने से इंकारी म.प्र. राज्य में आदेश 5 नियम 17 में जोड़े गये परन्तुक के आधार पर तामील मानी जा सकती है जब विशेष आदेशिका के विरुद्ध जारी किया गया हो - साधारण आदेशिका की दशा में, इंकारी के बावजूद चस्पा करना होगा। (शिवराज सिंह चौहान वि. राजेन्द्र कुमार)...247

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 2 व धारा 151, विनिर्दिष्ट अनुतोष अधिनियम, 1963, धारा 34 - किसी प्रार्थना या अभिवचन के बिना - कब्जे की डिक्री पारित की गयी - अनुज्ञेयता - घोषणा और शाश्वत ब्यादेश का वाद डिक्री किया गया - निम्न अपीलीय न्यायालय ने सि.प्र.सं. की धारा 151 के अन्तर्गत प्रदत्त शक्ति के प्रयोग में कब्जे की अतिरिक्त डिक्री पारित की - अभिनिर्धारित - अभिवचन या प्रार्थना के अभाव में, सि.प्र.सं. की धारा 151 के अन्तर्गत उपबंध का अवलंब लेकर कब्जे के लिए डिक्री प्रदान नहीं की जा सकती। (कनकलता वि. सुमद्रा)...433

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 4 - अभिवचन - सबूत का भार - यह साबित करने का भार कि पसंद का न्यायालय असुविधा का न्यायालय है या उसकी कार्यवाहियाँ पीड़ा पहुँचाने वाली या तंग करने वाली हैं, उस पक्षकार पर होगा जो ऐसा प्रतिवाद करते हुए प्रकथन करता है और उसे साबित करता है। (स्टेट बैंक ऑफ इंडिया वि. बैंक ऑफ आयरलैण्ड)...924

Civil Procedure Code (5 of 1908), Order 6 Rule 7 & Order 20 Rule 4 - Pleadings & Proof - *Civil litigation proceeds on pleadings of parties and proof thereof except the facts and law which may be taken judicial note of - Decision of a case cannot be based on grounds outside the pleadings of the parties.* [Ikrrar Mohammad v. Isub Khan] ...447

Civil Procedure Code (V of 1908), Order 6 Rule 17 - See - *Accommodation Control Act, M.P., 1961, Section 12(1)(f)* [Kamla Bai (Smt.) v. Smt. Preeti Raizada] ...603

Civil Procedure Code (5 of 1908), Order 7 Rule 11 - See - *Representation of the People Act, 1951, Section 86* [Mukesh Nayak v. Brijendra Pratap Singh] ...420

Civil Procedure Code (5 of 1908), Order 7 Rule 11(a) - See - *Representation of the People Act, 1951, Sections 83 & 86* [Shushil Kumar Khatri v. Sartaj Singh] ...204

Civil Procedure Code (5 of 1908), Order 7 Rule 11(a) to (f) - *When a question is beyond the scope of Order 7 Rule 11 then such question is to be raised by the defendant in his written statement.* [Keshav Prasad Sharma v. Halke Raikwar] ...179

Civil Procedure Code (5 of 1908), Order 7 Rule 11(d) - *Rejection of plaint - Application under Order 7 Rule 11(d) as suit is barred by limitation and no relief can be granted in view of S. 58(c) of Transfer of Property Act - Application rejected - Held - Plaintiffs pleaded that the sale deed was sham & bogus and it was not to be acted upon - They have also pleaded that they went to the defendant along with the amount for re-conveyance of the property but the defendant refused to do so - In view of the pleadings, it cannot be held that there is no cause of action and suit is barred by limitation - At this stage, Court is not required to enter into the applicability of the provisions contained u/s 58(c) of T.P. Act - Question of maintainability of suit and limitation will have to be decided at the time of hearing - Petition dismissed.* [Keshav Prasad Sharma v. Halke Raikwar] ...179

Civil Procedure Code (5 of 1908), Order 7 Rule 11 & Order 14 - *Maintainability of suit - Court only has to see the plaint averments and not the questions, answers of which are dependent upon the evidence.* [Keshav Prasad Sharma v. Halke Raikwar] ...179

Civil Procedure Code (5 of 1908), Order 16 Rule 6 - *Summons to produce document - Court possesses power to issue summon for production of documents - On the basis of facts & circumstances, Court is required to ascertain the justification of documents sought to be summoned during the course of trial.* [Jogendra Singh Pal v. Omprakash Gupta] ...896

Civil Procedure Code (5 of 1908), Order 18 Rule 12 - *Scope - Scope*

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 7 व आदेश 20 नियम 4 — अभिवचन और सबूत — सिविल वाद पक्षकारों के अभिवचनों और उनके सबूत पर अग्रसर होता है सिवाय उन तथ्यों और विधि के जिनकी न्यायिक अवेक्षा की जा सकती है — किसी मामले का विनिश्चय पक्षकारों के अभिवचनों से बाहर के आधारों पर आधारित नहीं हो सकता है। (इकरार मोहम्मद वि. ईसुब खान)...447

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 — देखें — स्थान नियंत्रण अधिनियम, म.प्र., 1961, धारा 12(1)(एफ) (कमला बाई (श्रीमति) वि. प्रीति रायजादा) ...603

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 — देखें — लोक प्रतिनिधित्व अधिनियम, 1951, धारा 86, (मुकेश नायक वि. ब्रजेन्द्र प्रताप सिंह) ...420

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11(ए) — देखें — लोक प्रतिनिधित्व अधिनियम, 1951, धाराएँ 83 व 86, (सुशील कुमार खत्री वि. सरताज सिंह) ...204

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11(ए) सें (एफ) — जब कोई प्रश्न आदेश 7 नियम 11 के विस्तार से परे है तब ऐसा प्रश्न प्रतिवादी द्वारा प्रतिवादपत्र में उठाया जाना चाहिए। (केशव प्रसाद शर्मा वि. हल्के रैकवार) ...179

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11(डी) — वादपत्र का नामजूर किया जाना — आदेश 7 नियम 11(डी) के अन्तर्गत आवेदन क्योंकि वाद परिसीमा वर्जित है और सम्पत्ति अंतरण अधिनियम की धारा 58(सी) को दृष्टिगत रखते हुए कोई अनुतोष प्रदान नहीं किया जा सकता — आवेदन खारिज — अभिनिर्धारित — वादियों ने यह अभिवचन किया कि विक्रय विलेख मिथ्या और बनावटी था और उस पर कार्यवाही नहीं की गयी — उन्होंने यह भी अभिवचन किया कि वे सम्पत्ति के प्रतिहस्तांतरण के लिए रकम सहित प्रतिवादी के पास गये किन्तु प्रतिवादी ने ऐसा करने से इंकार कर दिया — अभिवचनों को देखते हुए यह अभिनिर्धारित नहीं किया जा सकता कि कोई वाद कारण नहीं है और वाद परिसीमा वर्जित है — इस प्रक्रम पर न्यायालय को सम्पत्ति अंतरण अधिनियम की धारा 58(सी) के अन्तर्गत अन्तर्विष्ट उपबंधों के लागू होने को अन्तर्गुस्त करना आवश्यक नहीं है — वाद की पोषणीयता और परिसीमा का प्रश्न सुनवाई के समय विनिश्चित करना होगा — याचिका खारिज। (केशव प्रसाद शर्मा वि. हल्के रैकवार) ...179

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 व आदेश 14 — वाद की पोषणीयता — न्यायालय को केवल वादपत्र के प्रकरणों को देखना होगा न कि उन प्रश्नों को, जिनके उत्तर साक्ष्य पर निर्भर हैं। (केशव प्रसाद शर्मा वि. हल्के रैकवार) ...179

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सिविल प्रक्रिया संहिता (1908 का 5), आदेश 18 नियम 12 — विस्तार — आदेश

of Order 18 Rule 12 is that the demeanour can be recorded when the witness is under examination and not at a subsequent stage. [Yogendra Kumar v. Pavan Kumar Jain] ...415

Civil Procedure Code (5 of 1908), Order 23 Rule 2 & Order 2 Rule 2 - See Limitation Act, 1963, Section 14(1) & (3) [Hindustan Motors Ltd. (M/s.) v. D.R. Motors (M/s.)] ...215

Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 - *Anti-suit injunction - Governing principles - Principles governing grant of injunction apply in respect of grant of anti-suit injunction since it is a species of injunction.* [State Bank of India v. Bank of Ireland] ...924

Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 - *Anti-suit injunction - Powers of Indian Courts - In appropriate case, Courts in India have power to issue anti-suit injunction to a party over whom it has personal jurisdiction - The anti-suit injunction though directed against a person, in effect causes interference in the exercise of jurisdiction by another Court - Therefore, this power should be exercised sparingly with due regard to the rule of comity i.e. respect for the other Courts' jurisdiction.* [State Bank of India v. Bank of Ireland] ...924

Civil Procedure Code (5 of 1908), Order 41 Rule 14(3) [Sub-rule (3) added by High Court of M.P. vide notification No.5283-A published in M.P. Gazette dated 16.06.1960 part-IV] - *Service of notice - Whether necessary on a person who remained ex parte in the Court of first instance - Held - Sub-rule (3) empowers an appellate Court to dispense with notice to any respondent against whom the suit was heard ex parte - This being an empowering provision, such power is to be exercised necessarily by passing specific order of dispensation in writing.* [Shivraj Singh Chauhan v. Rajendra Kumar] ...247

Civil Procedure Code (5 of 1908), Order 41 Rule 14(3) [Sub-rule (3) added by M.P.H.C.] & 14(4) - *Distinction - Held - By virtue of sub-rule (4) proceedings incidental to an appeal are not vitiated merely in the absence of notice on any respondent who did not choose to give appearance and file an address for service in the Court of first instance - Whereas by virtue of sub-rule (3) appellate proceedings may be vitiated even against any respondent against whom the suit was heard ex parte if prejudice is shown to have caused to him and the appellate court has not passed specific order dispensing with notice on any such respondent.* [Shivraj Singh Chauhan v. Rajendra Kumar] ...247

Civil Procedure Code (5 of 1908), Order 41 Rule 14(4) - *Service of notice - Whether necessary on a person who remained ex parte in the Court of first instance - Held - Service of notice of any proceeding incidental to an appeal on a respondent is necessary only if he has appeared and filed an*

18 नियम 12 का विस्तार यह है कि भावमंगी अभिलिखित की जा सकती है जब साक्षी परीक्षा के अधीन हो न कि किसी पश्चात्तर्वर्ती प्रक्रम पर। (योगेन्द्र कुमार वि. पवन कुमार जैन) ...415

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सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 - वाद-निरोध व्यादेश - शासी सिद्धांत - व्यादेश प्रदान करने के शासी सिद्धांत वाद-निरोध व्यादेश प्रदान करने के सम्बन्ध में भी लागू होते हैं क्योंकि यह व्यादेश की एक प्रजाति है। (स्टेट बैंक ऑफ इंडिया वि. बैंक ऑफ आयरलैण्ड) ...924

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 - वाद-निरोध व्यादेश - भारतीय न्यायालयों की शक्तियाँ - समुचित मामले में, भारत के न्यायालयों को उस पक्षकार को वाद-निरोध व्यादेश जारी करने की शक्ति है जिस पर वह वैयक्तिक अधिकारिता रखता है - वाद-निरोध व्यादेश यद्यपि किसी व्यक्ति के विरुद्ध निदिष्ट होता है, वस्तुतः वह किसी अन्य न्यायालय द्वारा अधिकारिता के प्रयोग में हस्तक्षेप कारित करता है - इसलिए इस शक्ति का प्रयोग कभी-कभी सौहार्द के नियम अर्थात् अन्य न्यायालयों की अधिकारिता के आदर का सम्यक् ध्यान रखते हुए करना चाहिए। (स्टेट बैंक ऑफ इंडिया वि. बैंक ऑफ आयरलैण्ड) ...924

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 14(3) [म.प्र. उच्च न्यायालय द्वारा म.प्र. गजट तारीख 16.06.1960 भाग-चार में प्रकाशित अधिसूचना क्र. 5283-ए द्वारा जोड़ा गया उपनियम (3)] - सूचना की तामील - क्या उस व्यक्ति पर आवश्यक है जो प्रथम बार के न्यायालय में एकपक्षीय रहा है - अभिनिर्धारित - उपनियम (3) अपील न्यायालय को किसी प्रत्यर्थी पर, जिसके विरुद्ध वाद एकपक्षीय सुना गया था, सूचना की तामील से अभिमुक्त करने के लिए सशक्त करता है - यह सशक्त करने वाला उपबंध होने के कारण ऐसी शक्ति आवश्यक रूप से लिखित में अभिमुक्ति का विनिर्दिष्ट आदेश पारित करके प्रयोग की जानी चाहिए। (शिवराज सिंह चौहान वि. राजेन्द्र कुमार) ...247

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 14(3) [म.प्र. उच्च न्यायालय द्वारा जोड़ा गया उपनियम (3)] व 14(4) - भेद - अभिनिर्धारित - उपनियम (4) के आधार पर किसी अपील के आनुषंगिक कार्यवाहियाँ केवल किसी प्रत्यर्थी पर सूचना के अभाव में दूषित नहीं होती हैं जिसने प्रथम बार के न्यायालय में उपसंजात होने और तामील के लिए कोई पता फाइल करने का चयन नहीं किया - जबकि उपनियम (3) के आधार पर अपील कार्यवाहियाँ किसी भी प्रत्यर्थी के विरुद्ध दूषित हो सकती हैं जिसके विरुद्ध वाद एकपक्षीय रूप से सुना गया था यदि उसे पूर्वाग्रह कारित होना दर्शित किया जाता है और अपील न्यायालय ने ऐसे किसी प्रत्यर्थी पर सूचना से अभिमुक्ति देते हुए कोई विनिर्दिष्ट आदेश पारित नहीं किया है। (शिवराज सिंह चौहान वि. राजेन्द्र कुमार) ...247

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address for service in the Court of first instance or has appeared in the appeal - Provision applies to any proceeding incidental to an appeal and not to the appeal itself on merits. [Shivraj Singh Chauhan v. Rajendra Kumar] ...247

Civil Procedure Code (5 of 1908), Order 41 Rule 26 - After remand, findings recorded by trial Court not challenged before Lower Appellate Court - Those findings can not be attacked in second appeal except on grounds envisaged u/s 100 CPC. [Ikrrar Mohammad v. Isub Khan] ...447

Civil Procedure Code (5 of 1908), Order 41 Rule 33, Land Acquisition Act, 1894, Sections 28 & 34 - Reference Court has not awarded interest which is payable to the claimant under various heads - Claimant has not filed an appeal against the decree of Reference Court - Held - Appellate Court may pass any decree or order which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though the appeal is as to part only of the decree and such party or parties may not have filed an appeal - High Court awarded interest as provided u/ss. 28 & 34 of Act. [Land Acquisition Officer v. Jeet Singh] ...1001

Civil Procedure Code (5 of 1908), Order 43 Rule 1(a) - See - Family Courts Act, 1984, Sections 19, 20 & 21 [Kamla Patel v. Neeraj Prasad Patel]...253

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 10(iv), Civil Services (Pension) Rules, M.P. 1976, Rule 9 - Withholding of pension to the extent of 1% with cumulative effect - Petitioner retired before the order of penalty could be passed - Penalty of withholding of 1% of pension with cumulative effect imposed - Held - Such penalty is not a minor penalty - If petitioner had already retired, respondents could have taken recourse of Rule 9 of Rules, 1976 - Order of penalty quashed. [Ahmad Hussain v. State of M.P.] ...581

Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rule 14(5) - See - Service Law [Balveer Singh v. State of M.P.] ...191

Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rules 14 & 20 - See - Service Law [Pramod Kumar Agrawal v. State of M.P.]...145

Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rule 18 - See - Service Law [Balveer Singh v. State of M.P.] ...191

Civil Services (General Conditions of Service) Rules, M.P. 1961, Rule 12(1)(a) & 12(1)(f) - See - Service Law [Suresh Kumar v. State of M.P.] ...815

Civil Services (Pension) Rules, M.P. 1976, Rule 9 - See - Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 10(iv) [Ahmad Hussain v. State of M.P.] ...581

Civil Services (Pension) Rules, M.P. 1976, Rule 42(1)(b) - See - Service Law [Bhagvant Singh Parihar v. State of M.P.] ...199

किया हो या वह अपील में उपसंज्ञात हुआ हो — उपबंध अपील की आनुषंगिक किसी कार्यवाही को लागू होते हैं न कि गुणदोषों पर स्वयं अपील को। (शिवराज सिंह चौहान वि. राजेन्द्र कुमार) ...247

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 26 — प्रतिप्रेषण के बाद विचारण न्यायालय द्वारा अभिलिखित निष्कर्षों को निम्न अपीलीय न्यायालय के समक्ष चुनौती नहीं दी गई — उन निष्कर्षों को द्वितीय अपील में सि.प्र.सं. की धारा 100 के अन्तर्गत परिकल्पित आधारों के सिवाय आक्षेपित नहीं किया जा सकता। (इकरार मोहम्मद वि. ईसुब खान) ...447

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 33, भूमि अर्जन अधिनियम, 1894, धाराएँ 28 व 34 — निर्देश न्यायालय ने वह ब्याज अधिनिर्णीत नहीं किया जो दावेदार को विभिन्न शीर्षों के अन्तर्गत देय हैं — दावेदार ने निर्देश न्यायालय की डिक्री के विरुद्ध अपील फाइल नहीं की — अभिनिर्धारित — अपील न्यायालय सभी पक्षकारों या उनमें से किसी के भी पक्ष में कोई ऐसी डिक्री या आदेश पारित कर सकता है जो किया जाना चाहिए था, और यथास्थिति ऐसा अतिरिक्त आदेश या डिक्री कर सकता है यद्यपि अपील डिक्री के केवल भाग के बारे में हो और ऐसे पक्षकार या पक्षकारों ने कोई भी अपील फाइल न की हो — उच्च न्यायालय ने अधिनियम की धारा 28 और 34 के अन्तर्गत उपबंधित ब्याज अधिनिर्णीत किया। (लेण्ड एक्वीजीशन ऑफिसर वि. जीतसिंह) ...1001

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Class III (Non-Ministerial) Forest Service Recruitment Rules, M.P. 1967, Rule 15 - See - Service Law [N.K. Dubey v. State of M.P.]...836

Class III (Non-Ministerial) Forest Services Recruitment Rules, M.P. 1999, Rule 16 - See - Service Law [N.K. Dubey v. State of M.P.]...836

Constitution, Article 12 - Mere violation of rules by any citizen or person will not include him in the definition of Article 12 - If a person violates any particular law, it will not mean that he will be amenable to writ jurisdiction under Article 226/227: [Sunil Kumar Saxena v. Holy Cross Ashram Higher Secondary School, Datia] ...29

Constitution, Article 14 - Liquor trade - Elimination & exclusion from business is inherent - Trade or business in liquor is a special category and must be treated as a class and cannot be placed on same pedestal as other trades - Where State Government frames a policy with object to secure maximum revenue for parting with its privilege to deal in liquor, action of State Government cannot be assailed on the ground that it infringes Article 14. [Chingalal Yadav v. State of M.P.] FB...788

Constitution, Article 14, Motoryan Karadhan Adhiniyam, M.P. 1991 [As amended w.e.f. 08.12.1999], Section 16(5) - Constitutional validity - S. 16(3) provides for seizure of the vehicle in the case of default of payment of tax - Such provision has not been assailed - In S. 16(5) only an additional rider has been added that the Court taking cognizance of the offence shall not release such vehicle - Provision not repugnant to main S. 16 and Motor Vehicle Act, 1988 - Provision cannot be said to be violative of Article 14 of Constitution - Provision is constitutionally valid - Petition dismissed. [Hardeo Motor Transport Co. (M/s.) v. State of M.P.] ...852

Constitution, Article 14 - See - Stamp Act, 1899, Section 35 [Vijay Choudhary v. Union of India] ...376

Constitution, Articles 14 & 19 - Liquor trade - No citizen has any fundamental right to trade or carry on business in liquor and all forms of dealing in liquor have from their inherent nature, been treated as class by themselves by all civilized societies. [Chingalal Yadav v. State of M.P.] FB...788

Constitution, Article 21 - Rehabilitation - No further acquisition of land, excavation or construction of canal network for Command Area of Indira Sagar and Omkareshwar Projects will be undertaken until Command Area Development Plans are cleared by committee of experts constituted for Sardar Sarovar, Indira Sagar and Omkareshwar Projects. [Narmada Bachao Andolan v. State of M.P.] ...553

Constitution, Article 21 - Rehabilitation - Respondents Nos.1 & 2 will provide rehabilitation and re-settlement benefits of rehabilitation policy of Government of M.P. for Narmada Valley Project to displaced persons and

तृतीय वर्ग (अलिपिकवर्गीय) वन सेवा भर्ती नियम, म.प्र. 1967, नियम 15 — देखें
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— सेवा विधि (एन.कै. दुबे वि. म.प्र. राज्य) ...836

संविधान, अनुच्छेद 12 — किसी नागरिक या व्यक्ति द्वारा नियमों का केवल उल्लंघन उसे अनुच्छेद 12 की परिभाषा में सम्मिलित नहीं करेगा — यदि कोई व्यक्ति किसी विशिष्ट विधि का उल्लंघन करता है तो इसका यह अर्थ नहीं होगा कि वह अनुच्छेद 226/227 के अन्तर्गत रिट अधिकारिता के अधधीन होगा। (सुनील कुमार सक्सेना वि. होली क्रॉस आश्रम हायर सेकण्डरी स्कूल, दतिया) ...29

संविधान, अनुच्छेद 14 — मदिरा व्यापार — कारोबार से विलोपन और अपवर्जन अन्तर्निहित है — मदिरा का व्यापार या कारोबार एक विशेष प्रवर्ग है तथा एक वर्ग के रूप में माना जाना चाहिए और अन्य व्यापारों के समान एक ही आधार पर नहीं रखा जा सकता — जहाँ राज्य सरकार अधिकतम राजस्व प्राप्त करने के उद्देश्य से मदिरा के सम्बन्ध में कार्यवाही करने के उसके विशेषाधिकार से अलग होकर कोई पॉलिसी बनाती है, वहाँ राज्य सरकार के कृत्य को इस आधार पर चुनौती नहीं दी जा सकती कि वह अनुच्छेद 14 का अतिलंघन करती है। (छिंगालाल यादव वि. म.प्र.राज्य) FB---788

संविधान, अनुच्छेद 14, मोटरयान कराधान अधिनियम, म.प्र. 1991 [08.12.1999 से यथासंशोधित], धारा 16(5) — संवैधानिक विधिमान्यता — धारा 16(3) कर के भुगतान में व्यक्तिगत दशा में वाहन के अभिग्रहण का उपबंध करती है — इस उपबंध को चुनौती नहीं दी गयी — धारा 16(5) द्वारा केवल एक अतिरिक्त उपबंध जोड़ा गया है कि अपराध का संज्ञान लेने वाला न्यायालय ऐसे वाहन को अभिमुक्त नहीं करेगा — उपबंध मूल धारा 16 और मोटर यान अधिनियम, 1988 से असंगत नहीं — उपबंध को संविधान के अनुच्छेद 14 का उल्लंघनकारी नहीं कहा जा सकता — उपबंध संवैधानिक रूप से विधिमान्य — याचिका खारिज। (हरदेव मोटर ट्रांसपोर्ट कं. (मे.) वि. म.प्र. राज्य) ...852

संविधान, अनुच्छेद 14 — देखें — स्टाम्प अधिनियम, 1899, धारा 35 (विजय चौधरी वि. यूनियन ऑफ इंडिया) ...376

संविधान, अनुच्छेद 14 व 19 — मदिरा व्यापार — किसी नागरिक को मदिरा का व्यापार करने या कारोबार चलाने का कोई मूलभूत अधिकार नहीं है और मदिरा व्यापार करने के सभी प्रकार उनकी अन्तर्निहित प्रकृति से सभी सम्य समाजों द्वारा उनके वर्ग माने गये हैं (छिंगालाल यादव वि. म.प्र.राज्य) FB---788

संविधान, अनुच्छेद 21 — पुनर्वास — इंदिरा सागर और ओंकारेश्वर परियोजनाओं के प्रभावित क्षेत्र के लिए भूमि का आगे कोई और अर्जन, उत्खनन या नहर तंत्र का निर्माण प्रारम्भ नहीं किया जायेगा जब तक कि सरदार सरोवर, इंदिरा सागर और ओंकारेश्वर परियोजनाओं के लिए गठित विशेषज्ञों की समिति द्वारा प्रभाव क्षेत्र विकास योजनाएँ स्पष्ट नहीं की जाती। (नर्मदा बचाओ आंदोलन वि. म.प्र. राज्य) ...553

संविधान, अनुच्छेद 21 — पुनर्वास — प्रत्यर्थी क्र. 1 व 2 इंदिरा सागर और ओंकारेश्वर नहर परियोजनाओं के विस्थापित व्यक्तियों और परिवारों को नर्मदा घाटी परियोजना के लिए म.प्र. शासन की पुनर्वास नीति के पुनर्वास और पुनःस्थापन लाभ प्रदान करेंगे और शिकायतों के

families of Indira Sagar and Omkareshwar Canal Projects and will constitute Grievance Redressal Authority to decide complaints. [Narmada Bachao Andolan v. State of M.P.] ...553

Constitution, Article 215, Contempt of Courts Act, 1971, Section 12 - Powers of the Court - Held - The jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice and that the purpose of the Court's action is a practical purpose and it is reasonably clear on the authorities that the Court will not exercise its jurisdiction upon a mere question of propriety - Even if it is assumed that the respective actions attributed to the respondents suffer from any inadvertence or impropriety, it would not be possible to hold anyone of them guilty of contempt of the Court. [Vivek Valenkar v. Arvind Joshi] ...636

Constitution, Article 226 - Contract - Award of contract to partners - Dispute between partners - In compliance of settlement before authority first partner returned amount invested by second partner and new agreement was executed between first partner and the federation - At the instance of Minister, federation awarded contract to second partner for remaining term of contract - Held - Order of federation is arbitrary and irrational that no responsible authority acting reasonably and in accordance with relevant law could have reached to such conclusion - Order quashed - Petition allowed. [Shivendra Singh v. State of M.P.] ...347

Constitution, Article 226 - Judicial Review - High Court does not sit over decision of disciplinary authority as if it is exercising appellate jurisdiction - Enquiry officer, disciplinary authority and appellate authority concurrently recorded finding against petitioner - Findings are based on documents on record and can not be held to be perverse - Petition dismissed. [S.C. Mukherjee v. Chairman, State Bank of India] ...391

Constitution, Article 226, Madhyamik Shiksha Mandal (Manyata) Viniyam, 2005 - Entitlement for compensation - Student admitted by the institution for the course for which it had no permission or recognition by the Board of Secondary Education under the Regulations of 2005 - Held - Student lost valuable academic year - Institution directed to pay compensation Rs.50,000 to student - Institution committed a fraud - District Administration directed to initiate appropriate criminal proceedings against institution - Petition allowed. [Ratna Prabha (Ku.) v. State of M.P.] ...387

Constitution, Article 226 - Multiple relief in one writ petition - Writ petition challenging show cause notice for removal from service and also seeks direction to release annual increment and fixation of pay - The grievances pre-existed when the petitioner was subject to show cause notice - Unless the law prohibits, petitioner has right to claim multiple relief. [Ramesh Singh Thakur v. Jabalpur Development Authority] ...827

विनिश्चय के लिए शिकायत निवारण प्राधिकरण का गठन करेंगे। (नर्मदा बचाओ आंदोलन वि. म.प्र. राज्य) ...553

संविधान, अनुच्छेद 215, न्यायालय अवमान अधिनियम, 1971, धारा 12 - न्यायालय की शक्तियाँ - अभिनिर्धारित - अवमानना में अधिकारिता का अवलंब नहीं लिया जाना चाहिए जब तक कि वास्तविक पूर्वाग्रह न हो, जो न्याय के सम्यक अनुक्रम के साथ सारवान हस्तक्षेप के रूप में सम्बन्धित हो सकता हो और यह कि न्यायालय की कार्यवाही का प्रयोजन व्यवहारिक प्रयोजन है और यह प्राधिकारियों पर युक्तियुक्त रूप से स्पष्ट है कि न्यायालय मात्र औचित्य के प्रश्न पर अपनी अधिकारिता का प्रयोग नहीं करेगा - यद्यपि यह माना जा सकता है कि प्रत्यर्थियों के कारण हुए सम्बन्धित कृत्य किसी अनवधानता या अनौचित्य से ग्रसित है, तथापि यह संभव नहीं होगा कि उनमें से किसी को न्यायालय अवमान का दोषी ठहराया जाए। (विवेक वालेनकर वि. अरविंद जोशी) ...636

संविधान, अनुच्छेद 226 - संविदा - भागीदारों को संविदा का दिया जाना - भागीदारों के मध्य विवाद - प्राधिकारी के समक्ष समझौते के अनुपालन में प्रथम भागीदार ने द्वितीय पक्षकार द्वारा निवेश की गयी धनराशि लौटा दी और प्रथम भागीदार और संघ के मध्य नया अनुबन्ध निष्पादित किया गया - मंत्री की प्रेरणा पर संघ ने संविदा की शेष अवधि के लिए द्वितीय भागीदार को संविदा प्रदान की - अभिनिर्धारित - संघ का आदेश मनमाना और तर्कहीन कि युक्तियुक्त रूप से और सुसंगत विधि के अन्तर्गत कार्य करने वाला कोई उत्तरदायी प्राधिकारी ऐसे निष्कर्ष पर नहीं पहुँच सकता था - आदेश अभिखंडित - याचिका मंजूर। (शिवेन्द्र सिंह वि. म.प्र. राज्य) ...347

संविधान, अनुच्छेद 226 - न्यायिक पुनर्विलोकन - उच्च न्यायालय अनुशासनिक प्राधिकारी के विनिश्चय पर अपीलीय अधिकारिता के समान प्रयोग नहीं कर सकता - जाँच अधिकारी, अनुशासनिक प्राधिकारी और अपीलीय प्राधिकारी ने समवर्ती रूप से याची के विरुद्ध निष्कर्ष अभिलिखित किये - निष्कर्ष अभिलेख पर मौजूद दस्तावेजों पर आधारित हैं और विपर्यस्त नहीं ठहराये जा सकते - याचिका खारिज। (एस.सी. मुखर्जी वि. चेयरमैन, स्टेट बैंक ऑफ इंडिया) ...391

संविधान, अनुच्छेद 226, माध्यमिक शिक्षा मण्डल (मान्यता) विनियम, 2005 - प्रतिकर की हकदारी - संस्था द्वारा छात्र को ऐसे पाठ्यक्रम के लिए प्रवेश दिया गया जिसके लिए उसके पास विनियम, 2005 के अन्तर्गत माध्यमिक शिक्षा मण्डल से कोई अनुमति या मान्यता नहीं थी - अभिनिर्धारित - छात्र का मूल्यवान शैक्षणिक सत्र नष्ट हो गया - संस्था को निदेश दिया गया कि छात्र को 50,000 रुपये प्रतिकर अदा करे - संस्था ने कपट किया - जिला प्रशासन को निदेशित किया गया कि संस्था के विरुद्ध समुचित दाण्डिक कार्यवाहियाँ प्रारम्भ करे - याचिका मंजूर। (रत्नप्रभा कुमारी) वि. म.प्र. राज्य) ...387

संविधान, अनुच्छेद 226 - एक रिट याचिका में बहुविध अनुतोष - सेवा से हटाए जाने के लिए कारण बताओ सूचना पत्र को चुनौती देने वाली रिट याचिका में वार्षिक वेतन वृद्धि देने और वेतन नियत करने के निदेश भी चाहे गये - जब याची को कारण बताओ सूचनापत्र दिया गया परिवेदना उससे पूर्ववर्ती थी - जब तक विधि द्वारा निषिद्ध न हो याची को बहुविध अनुतोष का दावा करने का अधिकार है। (रमेश सिंह ठाकुर वि. जबलपुर डेव्हलपमेंट अथॉरिटी) ...827

Constitution, Article 226 - See - Service Law [Vishvanath Mishra v. Chief Managing Director, Western Coal Fields Ltd.] ...864

Constitution, Article 226 - Show cause notice - Writ petition maintainable - When a show cause notice is *ex facie* a nullity or totally without jurisdiction then it can be interfered under Article 226 - Petitioner questions the authority of the C.E.O. to take any disciplinary action - Since jurisdiction of C.E.O. is being questioned, the petition under Article 226 is maintainable. [Ramesh Singh Thakur v. Jabalpur Development Authority] ...827

Constitution, Article 226 - Writ of Habeas Corpus - Custody lawful or unlawful - Petitioner gave birth to a child soon after death of her husband - Doctor after having dialogue with elder sister of petitioner gave child to resp. Nos. 3 & 4 - Since then they are bringing up the child - Resp. No. 3 & 4 are now not returning the child - Held - It could not be said that child was not given with the consent of petitioner - Child attending the school and is mentally alert - No material that child was taken by fraud or force - Child not in unlawful custody - Petition dismissed. [Tabassum Bano (Smt.) v. State of M.P.] ...35

Constitution, Article 226 - Writ of Habeas Corpus - Question of custodian or guardian of the child need not be decided in these proceedings. [Tabassum Bano (Smt.) v. State of M.P.] ...35

Constitution, Article 226 - Writ of Habeas Corpus - Scope - Court is not prevented from holding enquiry into facts - However, full scale trial is not appropriate in such proceedings. [Tabassum Bano (Smt.) v. State of M.P.] ...35

Constitution, Articles 226 & 227 - Termination of employee of an unaided educational institution - Action challenged in W.P. - Held - W.P. is maintainable against unaided educational institutions if element of public law is involved - Grievance of employee is personal in nature and therefore, element of public law is not involved - W.P. not maintainable. [Sunil Kumar Saxena v. Holy Cross Ashram Higher Secondary School, Datia] ...29

Constitution, Article 227 - See - Civil Procedure Code, 1908, Section 115(1) [Johra Bi v. Jageshwar] ...160

Contempt of Courts Act (70 of 1971), Section 12 - See - Constitution, Article 215 [Vivek Valenkar v. Arvind Joshi] ...636

Contract Act (9 of 1872), Section 23 - See - Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, M.P. 1982 [Entire chapter VIII from Sections 24 to 32 omitted w.e.f. 31.08.1998], Section 31 [Rameshwarlal v. Dattatraya] ...970

Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 69(3), Cooperative Societies Rules, M.P. 1962, Rule 75 - Winding up of Society - Natural Justice - An order of winding up of a Society is penal in nature having civil consequences - Before taking such an action, principles of

संविधान, अनुच्छेद 226 - देखें - सेवा विधि (विश्वनाथ मिश्रा वि. चीफ मेनेजिंग डायरेक्टर, वेस्टर्न कोलफील्ड्स लि.) ...864

संविधान, अनुच्छेद 226 - कारण बताओ सूचना पत्र - रिट याचिका पोषणीय - जब कारण बताओ सूचना पत्र प्रत्यक्षतः अतता या पूर्णतः बिना अधिकारिता का हो तब अनुच्छेद 226 के अन्तर्गत उसमें हस्तक्षेप किया जा सकता है - याची ने कोई अनुशासनिक कार्यवाही करने के मुख्य कार्यपालक अधिकारी के प्राधिकार को चुनौती दी - चूँकि मुख्य कार्यपालक अधिकारी की अधिकारिता को चुनौती दी जा रही है, इसलिए अनुच्छेद 226 के अन्तर्गत याचिका पोषणीय है। (रमेश सिंह ठाकुर वि. जबलपुर डेव्हलपमेंट अथॉरिटी) ...827

संविधान, अनुच्छेद 226 - बंदी प्रत्यक्षीकरण की रिट - अभिरक्षा वैधानिक या अवैधानिक - याची ने अपने पति की मृत्यु के तुरन्त बाद एक शिशु को जन्म दिया - चिकित्सक ने याची की बड़ी बहन से बात करने के बाद प्रत्यर्थी क्र. 3 व 4 को शिशु दिया - तब से वे शिशु का पालन-पोषण कर रहे हैं - प्रत्यर्थी क्र. 3 व 4 अब शिशु को नहीं लौटा रहे हैं - अभिनिर्धारित - यह नहीं कहा जा सकता कि शिशु को याची की सम्मति से नहीं दिया गया - शिशु स्कूल जाती है और मानसिक रूप से सतर्क है - कोई सामग्री नहीं कि शिशु को कपट या बल से लिया गया था - शिशु अवैधानिक अभिरक्षा में नहीं - याचिका खारिज। (तबस्सुम बानो (श्रीमति) वि. म.प्र. राज्य) ...35

संविधान, अनुच्छेद 226 - बंदी प्रत्यक्षीकरण की रिट - इन कार्यवाहियों में शिशु के अभिरक्षक या संरक्षक के प्रश्न का विनिश्चय नहीं करना चाहिए। (तबस्सुम बानो (श्रीमति) वि. म.प्र. राज्य) ...35

संविधान, अनुच्छेद 226 - बंदी प्रत्यक्षीकरण की रिट - विस्तार - न्यायालय तथ्यों की जाँच करने से निवारित नहीं है तथापि ऐसी कार्यवाहियों में पूर्ण पैमाने का विचारण समुचित नहीं है। (तबस्सुम बानो (श्रीमति) वि. म.प्र. राज्य) ...35

संविधान, अनुच्छेद 226 व 227 - सहायता न पाने वाली शैक्षणिक संस्था के कर्मचारी की सेवा समाप्ति - कृत्य को रिट याचिका में चुनौती - अभिनिर्धारित - सहायता न पाने वाली शैक्षणिक संस्था के विरुद्ध रिट याचिका पोषणीय है यदि लोक विधि का कोई तत्व अन्तर्ग्रस्त हो - कर्मचारी की शिकायत की प्रकृति व्यक्तिगत है और इसलिए लोक विधि का तत्व अन्तर्ग्रस्त नहीं है - रिट याचिका पोषणीय नहीं। (सुनील कुमार सक्सेना वि. होली क्रॉस आश्रम हायर सेकण्डरी स्कूल, दतिया) ...29

संविधान, अनुच्छेद 227 - देखें - सिविल प्रक्रिया संहिता, 1908, धारा 115(1), (जोहरा बी वि. जागेश्वर) ...160

न्यायालय अवमान अधिनियम (1971 का 70), धारा 12 - देखें - संविधान, अनुच्छेद 215, (विवेक वालेनकर वि. अरविंद जोशी) ...636

संविदा अधिनियम (1872 का 9), धारा 23 - देखें - विनिर्दिष्ट भ्रष्ट आचरण निवारण अधिनियम, म.प्र. 1982 खसम्पूर्ण अध्याय 8 धारा 24 से 32 तक तारीख 31.08.1998 से विलोपित, धारा 31 (रामेश्वरलाल वि. दत्तात्रय) ...970

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 69(3), सहकारी सोसाइटी नियम, म.प्र. 1962, नियम 75 - सोसाइटी का परिसमापन - नैसर्गिक न्याय - सोसाइटी के परिसमापन का आदेश शास्तिक प्रकृति का है जिसके सिविल परिणाम हैं - ऐसी कार्यवाही करने से पूर्व नैसर्गिक न्याय के सिद्धांतों का अनुसरण अवश्य किया जाना चाहिए था - नियम 75 समन

natural justice ought to have been followed - Rule 75 provides a specific procedure for service of summons which ought to have been followed - Service of notice on the Society not in accordance with the procedure - Serious prejudice has been caused to the Society who has suffered an order of winding up. [Jansahyog Grih Nirman Sahkari Sanstha Maryadit v. Deputy Registrar]...912

Cooperative Societies Rules, M.P. 1962, Rule 75 - Service of notice by affixure - How affected - Dy. Registrar, after recording due satisfaction that the modes enumerated in clauses (a), (b) & (c) of sub-rule (3) were not available and only mode was available by affixure of service - Then on specific order, service of notice by affixure can be affected. [Jansahyog Grih Nirman Sahkari Sanstha Maryadit v. Deputy Registrar] ...912

Cooperative Societies Rules, M.P. 1962, Rule 75 - Valid service of notice - Process server affixed the notice on the office of the Society despite no order in that regard - Held - Process server was not authorized to decide to serve the notice by affixure - Before affixure of the notice, he ought to have obtained an order from the Dy. Registrar - Not valid service of notice. [Jansahyog Grih Nirman Sahkari Sanstha Maryadit v. Deputy Registrar] ...912

Country Spirit Rules, M.P. 1995, Rule 9 - See - Foreign Liquor Rules, M.P. 1996, Rule 8(1)(a) [Chingalal Yadav v. State of M.P.] FB...788

Criminal Procedure Code, 1973 (2 of 1974), First Schedule, Appendix "A" r/w S. 2(a) - See - Essential Commodities Act, 1955, Sections 7(1)(a)(ii) & 10-A, [Hariom v. State of M.P.] ...764

Criminal Procedure Code, 1973 (2 of 1974), Section 2(d) - Complaint as defined u/s 2(d) of the Code does not include a police report. [Gautam Kalloo (Dr.) v. State of M.P.] ...536

Criminal Procedure Code, 1973 (2 of 1974), Section 91 - Summoning of documents at the stage of framing of charge - It cannot be said to be absolute proposition of law that under no circumstance the Court can look into the material produced by defence at the time of framing of charge. [Munnalal v. State of M.P.] ...703

Criminal Procedure Code, 1973 (2 of 1974), Section 91 - Summoning of documents at the stage of framing of charge - There can be rare and exceptional cases where alleged defence material could be shown to the trial Court for demonstrating that prosecution version is totally absurd or preposterous and defence material could be looked into by the Court at the time of framing of charge - Trial Court was directed to entertain application u/s 91 and also to examine documents sought to be summoned by petitioner at the time of framing of charge. [Munnalal v. State of M.P.] ...703

Criminal Procedure Code, 1973 (2 of 1974), Sections 133 & 145 - Nuisance - In proceedings u/s 145, material available on record discloses

की तामील की विनिर्दिष्ट प्रक्रिया का उपबन्ध करता है जिसका अनुसरण किया जाना चाहिए था - सोसाइटी पर सूचना पत्र की तामील प्रक्रिया के अनुसार नहीं - सोसाइटी को गम्भीर पूर्वाग्रह कारित हुआ है जो परिसमापन के आदेश से पीड़ित हुई है। (जन सहयोग गृह निर्माण सहकारी संस्था, मर्यादित वि. डिप्टी रजिस्ट्रार) ...912

सहकारी सोसाइटी नियम, म.प्र. 1962, नियम 75 - चस्पे द्वारा सूचना पत्र की तामील - कैसे प्रभावशील की जाएगी - उप-पंजीयक यह सम्यक् समाधान अभिलिखित करने के बाद कि उप-नियम (3) के खण्ड (ए), (बी) और (सी) में वर्णित विधियाँ उपलब्ध नहीं थीं और चस्पे करके तामील करने की एकमात्र विधि उपलब्ध थी - तब विनिर्दिष्ट आदेश पर चस्पे द्वारा सूचना पत्र की तामील प्रभावशील की जा सकती है। (जन सहयोग गृह निर्माण सहकारी संस्था, मर्यादित वि. डिप्टी रजिस्ट्रार) ...912

सहकारी सोसाइटी नियम, म.प्र. 1962, नियम 75 - सूचना पत्र की विधिमान्य तामील - आदेशिका तामीलकर्ता ने सोसाइटी के कार्यालय पर सूचना पत्र चस्पे किया यद्यपि उस सम्बन्ध में कोई आदेश नहीं था - अभिनिर्धारित - आदेशिका तामीलकर्ता चस्पे द्वारा सूचना पत्र की तामील करने का निर्णय लेने के लिए प्राधिकृत नहीं था - सूचना पत्र चस्पे करने से पूर्व उसे उप-पंजीयक से आदेश-अभिप्राप्त करना चाहिए था - सूचना पत्र की तामील विधिमान्य नहीं। (जन सहयोग गृह निर्माण सहकारी संस्था, मर्यादित वि. डिप्टी रजिस्ट्रार) ...912

देशी मद्य नियम, म.प्र. 1995, नियम 9 - देखें - विदेशी मदिरा नियम, म.प्र. 1996, नियम 8(1)(ए) (छिंगालाल यादव वि. म.प्र. राज्य) ...788

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), प्रथम अनुसूची परिशिष्ट "ए" सहपठित धारा 2(ए) - देखें - आवश्यक वस्तु अधिनियम, 1955, धाराएँ 7(1)(ए)(ii) व 10-ए, (हरिओम वि. म.प्र. राज्य) ...764

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 2(डी) - संहिता की धारा 2(डी) के अन्तर्गत यथा परिभाषित परिवाद पुलिस रिपोर्ट को सम्मिलित नहीं करता। (गौतम कल्लो (डॉ०) वि. म.प्र. राज्य) ...536

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 91 - आरोप की विरचना के प्रक्रम पर दस्तावेजों का बुलाया जाना - इसे विधि की आत्यंतिक प्रतिपादना होना नहीं कहा जा सकता कि किसी भी परिस्थिति में न्यायालय प्रतिरक्षा द्वारा आरोप विरचना के समय पेश सामग्री पर विचार नहीं कर सकता। (मुन्ना लाल वि. म.प्र. राज्य) ...703

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 91 - आरोप की विरचना के प्रक्रम पर दस्तावेजों का बुलाया जाना - विरल और आपवादिक मामले हो सकते हैं जहाँ विचारण न्यायालय को कथित प्रतिरक्षा सामग्री यह प्रदर्शित करने कि अभियोजन कथा पूर्णतः अर्थहीन या असंगत है, दर्शायी जा सकती है और आरोप विरचना के समय न्यायालय द्वारा प्रतिरक्षा सामग्री पर विचार किया जा सकता है - विचारण न्यायालय को निदेश दिया गया कि धारा 91 के अन्तर्गत आवेदन ग्रहण करे और आरोप की विरचना के समय उन दस्तावेजों पर विचार की जाँच करे जिन्हें समनित करना याची द्वारा चाहा गया है। (मुन्ना लाल वि. म.प्र. राज्य) ...703

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 133 व 145 - न्यूसेंस - धारा 145 के अन्तर्गत कार्यवाहियों में, अभिलेख पर उपलब्ध सामग्री लोक न्यूसेंस के अस्तित्व को प्रकट

existence of public nuisance - SDM is not precluded from taking action u/s 133 - Application dismissed. [Shivraj Singh v. State of M.P.] ...742

Criminal Procedure Code, 1973 (2 of 1974), Section 154 - See - Penal Code, 1860, Section 376 [Fulloo @ Phool Singh v. State of M.P.] ...*4

Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) - Police investigation - Magistrate directed S.P. to take legal action instead of directing Officer Incharge of Police Station to register FIR - Police also did not submit its report in terms of S. 173 of Code - Such order cannot be said to have been passed u/s 156(3) of Code. [Yashpal Singh v. State of M.P.] ...520

Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) - Power to direct investigation - Magistrate is empowered to pass an order to investigate the allegations alleged in complaint even if it is triable by Court of Sessions. [Arun Kumar Jain v. Dinesh Tripathi] ...707

Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) - Power to direct investigation - While passing an order to investigate, the Magistrate ought to have applied his mind to the allegations - If order is passed without application of mind, even at the stage of direction u/s 156(3) Cr.P.C., it may be liable to be set-aside. [Arun Kumar Jain v. Dinesh Tripathi] ...707

Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) -When direction to investigate cannot be given - In absence of any specific allegation of causing any injury or assigning any role against superior officers, merely on the bald statement issuance of direction to investigate the said incident by the concerning SHO against them cannot be directed. [Arun Kumar Jain v. Dinesh Tripathi] ...707

Criminal Procedure Code, 1973 (2 of 1974), Sections 156(3) & 202 - Jurisdiction of Magistrate - If a complaint of a cognizable offence is made, power u/s 156(3) of Code can be invoked by Magistrate. [Yashpal Singh v. State of M.P.] ...520

Criminal Procedure Code, 1973 (2 of 1974), Section 167(2) - Imprisonment for life or imprisonment for a term of not less than ten years - 'Offence punishable with imprisonment for a term of not less than 10 years' in Cl. (i) of proviso (a) to S. 167(2) connotes the offence for which imprisonment is for clear period of 10 years or more - Offence of robbery (not committed on highway between sunset and sunrise) punishable with R.I. for a term which may extend to 10 years - Maximum period of detention u/s 167(2) Proviso would be 60 days and not 90 days - Application allowed. [Sunder v. State of M.P.] ...1017

Criminal Procedure Code, 1973 (2 of 1974), Section 174 - Inquest - There is absolutely no requirement of law of mentioning of FIR, name of accused or names of eye witnesses in merged inquest report. [Indu Bai v. State of M.P.] ...*7

करती है - एसडीएम धारा 133 के अन्तर्गत कार्यवाही करने से विवर्जित नहीं है - आवेदन खारिज।
(शिवराज सिंह वि. म.प्र.राज्य) ...742

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 - देखें - दण्ड संहिता, 1860, धारा 376, (फुल्लू उर्फ फूलसिंह वि. म.प्र. राज्य) ---*4

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) - पुलिस अन्वेषण - मजिस्ट्रेट ने पुलिस थाने के भारसाधक अधिकारी को एफ.आई.आर. दर्ज करने का निदेश देने के बजाय एस.पी. को विधिक कार्यवाही करने का निदेश दिया - पुलिस ने भी संहिता की धारा 173 के निबंधनों के अनुसार रिपोर्ट पेश नहीं की - ऐसा आदेश संहिता की धारा 156(3) के अन्तर्गत पारित किया जाना नहीं कहा जा सकता। (यशपाल सिंह वि. म.प्र. राज्य) ...520

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) - अन्वेषण का निदेश देने की शक्ति - मजिस्ट्रेट परिवाद में कथित अभिकथनों का अन्वेषण करने का आदेश पारित करने के लिए सशक्त है यद्यपि यह सेशन न्यायालय द्वारा विचारणीय हो। (अरुण कुमार जैन वि. दिनेश त्रिपाठी) ...707

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) - अन्वेषण का निदेश देने की शक्ति - अन्वेषण करने का आदेश पारित करते समय, मजिस्ट्रेट को अभिकथनों के बारे में अपने मस्तिष्क का प्रयोग करना चाहिए - यदि द.प्र.सं. की धारा 156(3) के अन्तर्गत निदेश के प्रक्रम पर भी मस्तिष्क का प्रयोग किये बिना आदेश पारित किया जाता है तो यह अपास्त किया जा सकेगा। (अरुण कुमार जैन वि. दिनेश त्रिपाठी) ...707

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) - कब अनुसंधान करने का निदेश नहीं दिया जा सकता - कोई क्षति कारित करने के किसी विनिर्दिष्ट अभिकथन या वरिष्ठ अधिकारियों के विरुद्ध कोई भूमिका समनुदिष्ट करने के अभाव में मात्र स्पष्ट कथनों पर संबंधित एस.एच.ओ. से उनके विरुद्ध कथित घटना का अन्वेषण कराने का निदेश जारी करना निदेशित नहीं किया जा सकता। (अरुण कुमार जैन वि. दिनेश त्रिपाठी) ...707

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 156(3) व 202 - मजिस्ट्रेट की अधिकारिता - यदि किसी संज्ञेय अपराध का कोई परिवाद किया जाता है, तो मजिस्ट्रेट द्वारा संहिता की धारा 156(3) के अन्तर्गत शक्ति का अवलंब लिया जा सकता है। (यशपाल सिंह वि. म.प्र. राज्य) ...520

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2) - आजीवन कारावास या ऐसी अवधि का कारावास जो दस वर्ष से कम नहीं है - धारा 167(2) के परन्तुक (ए) के खण्ड (i) में दिया ऐसी अवधि के कारावास से दण्डनीय अपराध जो दस वर्ष से कम नहीं है, उस अपराध का संकेत करता है जिसके लिए कारावास 10 वर्ष या उससे अधिक की स्पष्ट कालावधि के लिए है - लूट का अपराध (जो राजमार्ग पर सूर्यास्त और सूर्योदय के बीच नहीं किया गया) कठोर कारावास, जो 10 वर्ष की अवधि तक विस्तारित हो सकेगा, से दण्डनीय है - धारा 167(2) के परन्तुक के अन्तर्गत निरोध की अधिकतम अवधि 60 दिन होगी न कि 90 दिन - आवेदन मंजूर। (सुंदर वि. म.प्र. राज्य) ...1017

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 174 - मृत्युसमीक्षा - मर्ग मृत्यु समीक्षा रिपोर्ट में एफ.आई.आर., अभियुक्त का नाम या प्रत्यक्षदर्शी साक्षियों के नामों का उल्लेख करने की आत्यंतिक रूप से विधि की कोई अपेक्षा नहीं है। (इन्दु बाई वि. म.प्र. राज्य) ---*7

Criminal Procedure Code, 1973 (2 of 1974), Section 174 - See - Penal Code 1860, Sections 306 & 498-A, [Shriram v. State of M.P.] ...665

Criminal Procedure Code, 1973 (2 of 1974), Section 177, Dowry Prohibition Act, 1961, Sections 4 & 6 - Jurisdiction - Complaint discloses that cause of action arose at Bhopal - Criminal Court at Guna has no jurisdiction to entertain the complaint - Complainant given liberty to institute fresh complaint before the Court of competent jurisdiction. [Kirti Prakash Saxena v. State of M.P.] ...539

Criminal Procedure Code, 1973 (2 of 1974), Section 195(1)(a)(i), Penal Code, 1860, Section 188 - Complaint for violation of the Model Code of Conduct - Cognizance of such offence can be taken only on the complaint in writing of the Secretary of the Election Commission of India or of some other public servant to whom he is administratively subordinate. [Gautam Kalloo (Dr.) v. State of M.P.] ...536

Criminal Procedure Code, 1973 (2 of 1974), Section 197 - Acts not done in discharge of official duty - Umbrella of S. 197 Cr.P.C. is not available. [O.P. Yadav v. State of M.P.] ...745

Criminal Procedure Code, 1973 (2 of 1974), Section 202 - Nature of investigation - Object is not to envisage a fresh case on police report but to assist Magistrate in completing the proceedings already instituted upon a complaint before him. [Yashpal Singh v. State of M.P.] ...520

Criminal Procedure Code, 1973 (2 of 1974), Section 204 - There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. [O.P. Yadav v. State of M.P.] ...745

Criminal Procedure Code, 1973 (2 of 1974), Section 222 - When offence proved included in offence charged - When it is not clear or doubtful as to what offence is committed or made out, then the Court possess the power to convict a person in relation to a minor offence established from the evidence brought on record. [Mazboot Singh v. State of M.P.] ...674

Criminal Procedure Code, 1973 (2 of 1974), Section 240, Penal Code, 1860, Sections 304 Part II & 330 - Framing of charges - Custodial death - Charges framed against officers u/s 304 Part II but dropped u/s 330 IPC - Whereas, HC directed to frame charges u/s 323/34 IPC - Held - Deceased was asthmatic - Despite that he was detained in wholly unhygienic conditions which triggered his asthmatic attack leading to his death on account of asphyxia - Injuries found on the body of deceased - Prima facie case made out for framing of charges u/s 304 Part II & 330 IPC - Order of Sessions

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 174 — देखें — दण्ड संहिता, 1860, धाराएँ 306 व 498—ए, (श्रीराम वि. म.प्र. राज्य) ...665

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 177, दहेज प्रतिषेध अधिनियम, 1961, धाराएँ 4 व 6 — अधिकारिता — परिवाद से प्रकट होता है कि वाद कारण भोपाल में उत्पन्न हुआ — गुना के दाण्डिक न्यायालय को परिवाद ग्रहण करने की कोई अधिकारिता नहीं है — परिवादी को सक्षम अधिकारिता वाले न्यायालय के समक्ष परिवाद संस्थित करने की स्वतंत्रता दी गई। (कीर्ति प्रकाश सक्सेना वि. म.प्र. राज्य) ...539

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 195(1)(ए)(i), दण्ड संहिता, 1860, धारा 188 — आदर्श आचार संहिता के उल्लंघन के लिए परिवाद — ऐसे अपराध का संज्ञान केवल भारत के निर्वाचन आयोग के सचिव के या किसी अन्य लोक सेवक के, जिसके वह प्रशासनिक तौर पर अधीनस्थ है, लिखित परिवाद पर ही लिया जा सकता है। (गौतम कल्लो (डॉ.) वि. म.प्र. राज्य) ...536

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 197 — कार्य पदीय कर्तव्यों के निर्वहन में नहीं किये गये — द.प्र.सं. की धारा 197 की सुरक्षा उपलब्ध नहीं है। (ओ.पी. यादव वि. म.प्र. राज्य) ...745

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 202 — अन्वेषण की प्रकृति — उद्देश्य पुलिस रिपोर्ट पर नया मामला परिकल्पित करना नहीं है बल्कि मजिस्ट्रेट को उसके समक्ष किसी परिवाद पर पहिले से संस्थित कार्यवाहियों को पूर्ण करने में सहायता करना है। (यशपाल सिंह वि. म.प्र. राज्य) ...520

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 204 — वारण्ट जारी करने के लिए कोई स्ट्रेटजेक्ट फॉर्मूला नहीं हो सकता है किन्तु सामान्य नियम यह हो सकता है कि जब तक कोई अभियुक्त किसी जघन्य अपराध के किये जाने के आरोप से आरोपित नहीं किया गया हो और यह भय हो कि वह साक्ष्य को प्रभावित या नष्ट कर सकता है या विधि की प्रक्रिया से बच निकल सकता है तब तक गैर जमानतीय वारण्ट जारी किये जाने से बचना चाहिए। (ओ.पी. यादव वि. म.प्र. राज्य) ...745

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 222 — जब साबित अपराध आरोपित अपराध में सम्मिलित हो — जब यह स्पष्ट न हो या शंकास्पद हो कि कौन सा अपराध किया गया है, तब न्यायालय को, अभिलेख पर लायी गयी साक्ष्य से साबित किसी छोटे अपराध के सम्बन्ध में किसी व्यक्ति को दोषसिद्ध करने की शक्ति है। (मजबूत सिंह वि. म.प्र. राज्य) ...674

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 240, दण्ड संहिता, 1860, धाराएँ 304 भाग II व 330 — आरोपों की विरचना — अभिरक्षा में मृत्यु — अधिकारियों के विरुद्ध भा.द.सं. की धारा 304 भाग II के अन्तर्गत आरोप विरचित किये गये किन्तु धारा 330 के अन्तर्गत छोड़ दिये गये — जबकि, उच्च न्यायालय ने भा.द.सं. की धारा 323/34 के अन्तर्गत आरोप विरचित करने का निदेश दिया — अभिनिर्धारित — मृतक दमा से पीड़ित था — इसके बावजूद उसे पूर्णतः अस्वास्थ्यकर दशा में निरुद्ध रखा गया जिसके कारण उसे अस्थमा का दौरा आया और श्वासावरोध के कारण उसकी मृत्यु हो गयी — मृतक के शरीर पर क्षतियाँ पायी गयीं — भा.द.सं. की धारा 304 भाग II व 330 के अन्तर्गत आरोपों की विरचना के लिए प्रथम दृष्ट्या मामला बनता है — सेशन न्यायाधीश का भा.द.सं. की धारा 304 भाग II के अन्तर्गत आरोप विरचित करने का आदेश पुनः स्थापित किया गया

Judge framing charge u/s 304 Part II IPC restored - Also direction issued to frame charges u/s 330 IPC. [Indu Jain v. State of M.P.] SC... 1

*Criminal Procedure Code, 1973 (2 of 1974), Section 311 - Re-examination of prosecutrix - Prosecutrix already examined cannot be permitted to be re-examined on the basis of subsequent affidavit filed by her. [Balveer v. State of M.P.] ...*2*

Criminal Procedure Code, 1973 (2 of 1974), Section 319 - Evidence - On the basis of examination-in-chief of witnesses, a person can be summoned u/s 319. [Rakesh Ranpuria v. State of M.P.] ...749

Criminal Procedure Code, 1973 (2 of 1974), Section 319 - Power to proceed against other persons appearing to be guilty of offence - Court is empowered to proceed against any person not shown or mentioned as accused if it appears from evidence that such person has committed an offence - This power is conferred on Court to do real justice. [Rakesh Ranpuria v. State of M.P.] ...749

Criminal Procedure Code, 1973 (2 of 1974), Sections 397 & 401 - Locus standi of State to file revision - Discussed. [Yashpal Singh v. State of M.P.] ...520

Criminal Procedure Code, 1973 (2 of 1974), Section 407 - Transfer of case - Applicants being prosecuted u/ss. 122, 124-A, 153-A of IPC, u/ss. 3 & 13 of Unlawful Activities (Prevention) Act, 1967 and u/ss. 25 & 27 of Arms Act, 1959 at Dhar - Counsel for applicants from Ujjain who appeared before Court was beaten and threatened by some of members of Bar Association and Political Party - News also published in newspapers under heading "Dhar Mein Simi Sarganaon Ke Vakil Ko Phir Peeta" - CD also shows that Advocate was illtreated and beaten - Held - For administrative convenience and also in the interest of fair and impartial justice the matter is transferred from Dhar to Indore - Application allowed. [Ansar v. State of MP] ...753

Criminal Procedure Code, 1973 (2 of 1974), Section 436 - Grant of bail for bailable offence - The right to claim bail granted by S. 436 in a bailable offence is an absolute and indefeasible right - In bailable offences there is no question of discretion in granting bail as the words of S. 436 are imperative - The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. [Rasiklal v. Kishore] SC... 11

Criminal Procedure Code, 1973 (2 of 1974), Section 436(2) - S. 436(2) empowers any Court to refuse bail without prejudice to action u/s 446, where a person fails to comply with the conditions of bail bond - However, bail granted in bailable offence can be cancelled on various grounds (some

— भा.द.सं. की धारा 330 के अन्तर्गत आरोप विरचित करने का भी निदेश जारी किया गया। (इन्दू जैन वि. म.प्र. राज्य) SC---1

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 — अभियोक्त्री की पुनःपरीक्षा — अभियोक्त्री, जिसकी पूर्व में परीक्षा हो चुकी हो, को उसके द्वारा पेश पश्चात्पूर्वी शपथपत्र के आधार पर पुनःपरीक्षा की अनुमति नहीं दी जा सकती। (बलवीर वि. म.प्र. राज्य) ---*2

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 — साक्ष्य — साक्षियों की मुख्य परीक्षा के आधार पर धारा 319 के अन्तर्गत किसी व्यक्ति को समन किया जा सकता है। (राकेश रनपुरिया वि. म.प्र. राज्य) ...749

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 — अपराध का दोषी प्रतीत होने वाले अन्य व्यक्ति के विरुद्ध कार्यवाही करने की शक्ति — न्यायालय किसी व्यक्ति के विरुद्ध कार्यवाही करने के लिए सशक्त है जो अभियुक्त के रूप में दर्शित या उल्लिखित नहीं किया गया है यदि साक्ष्य से यह प्रतीत होता हो कि ऐसे व्यक्ति ने अपराध किया है — न्यायालय को यह शक्ति वास्तविक न्याय करने के लिए प्रदत्त की गई है। (राकेश रनपुरिया वि. म.प्र. राज्य) ...749

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 397 व 401 — राज्य का पुनरीक्षण पेश करने का अधिकार — विवेचना की गयी। (यशपाल सिंह वि. म.प्र. राज्य) ...520

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 407 — मामले का अंतरण — आवेदकों को भा.द.सं. की धारा 122, 124-ए, 153-ए, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3 व 13 तथा आयुध अधिनियम, 1959 की धारा 25 व 27 के अन्तर्गत धार में अभियोजित किया गया — आवेदकों के अधिवक्ता उज्जैन के थे जो न्यायालय के समक्ष उपसंजात हुए और उन्हें बार एसोसियेशन और राजनैतिक दल के कुछ सदस्यों द्वारा पीटा गया और धमकी दी गई — समाचार पत्रों में "धार में सिमी सरगनाओं के वकील को फिर पीटा" शीर्षक से समाचार भी प्रकाशित किया गया — सी.डी. भी यह दर्शाती है कि अधिवक्ता के साथ दुर्व्यवहार किया गया और पीटा गया — अभिनिर्धारित — प्रशासनिक सुविधा के लिए और ऋजु और निष्पक्ष न्याय के हित में मामला धार से इन्दौर अंतरित किया गया — अपील मंजूर। (अंसार वि. म.प्र. राज्य) ...753

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 436 — जमानतीय अपराध में जमानत का दिया जाना — किसी जमानतीय अपराध में धारा 436 द्वारा प्रदत्त जमानत का दावा करने का अधिकार आत्यंतिक और अजेय अधिकार है — जमानतीय अपराधों में जमानत दिये जाने में विवेकाधिकार का कोई प्रश्न नहीं है क्योंकि धारा 436 के शब्द आज्ञापक हैं — अधिकारी या न्यायालय को केवल अभियुक्त का सामान्य मुचलका लेने और प्रतिभू सहित प्रतिभूति की माँग करने के मध्य विकल्प उपलब्ध है। (रसिकलाल वि. किशोर) SC---11

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 436(2) — जहाँ कोई व्यक्ति जमानतपत्र की शर्तों का अनुपालन करने में असफल हो जाता है, वहाँ धारा 436(2) किसी न्यायालय को धारा 446 के अन्तर्गत कार्यवाही पर प्रतिकूल प्रभाव डाले बिना जमानत देने से इंकार करने के लिए सशक्त करती है — तथापि, जमानतीय अपराध में प्रदत्त जमानत विभिन्न आधारों पर रद्द की जा

illustrative grounds are stated in para 8), but cannot be cancelled on the ground that complainant was not heard. [Rasiklal v. Kishore] SC...11

Criminal Procedure Code, 1973 (2 of 1974), Sections 438 & 439 - Regular bail - Custody - Even though, an application for grant of regular bail on behalf of accused enjoying liberty of release on anticipatory bail may be presented through a Counsel, yet, it can be heard and decided only when accused is in custody. [Sonu @ Shahazad v. State of M.P.] ...758

Criminal Procedure Code, 1973 (2 of 1974), Sections 438 & 439 - Regular bail - Custody - Interim bail - Court hearing regular bail application has inherent powers to grant interim bail pending its final disposal - If application for grant of interim bail is made on the ground of non-availability of case diary, the Court should hear and decide interim bail application on the same day. [Sonu @ Shahazad v. State of M.P.] ...758

Criminal Procedure Code, 1973 (2 of 1974), Sections 438 & 439 - Regular bail - Custody - In view of precondition of custody no adjournment should be asked by Public Prosecutor on the ground of non-availability of case diary - Accused may also disclose the date of his proposed surrender to custody at least 3 days in advance. [Sonu @ Shahazad v. State of M.P.]...758

Criminal Procedure Code, 1973 (2 of 1974), Sections 451 & 457 - See - Motoryan Karadhan Adhiniyam, M.P., 1991, Section 16 [Hardeo Motor Transport Co. (M/s.) v. State of M.P.] ...852

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Complaint - Quashed without petition - Four police officers filed petition seeking quashment of the private complaint and the direction to investigate against them - Addl.S.P. has not filed such petition - Held - There is no ground to investigate against the police officers including the Addl.S.P. - Invoking the inherent powers with a view to prevent the abuse of process of Court or to otherwise secure the ends of justice the complaint filed against the Addl.S.P. also quashed. [Arun Kumar Jain v. Dinesh Tripathi] ...707

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Locus standi - Offence of murder registered at Firozabad against NA-2 on the FIR of applicant - In order to screen NA-2, police officers of Gwalior registered an offence under Excise Act against NA-2 - Application u/s 482 Cr.P.C. filed by applicant / informant of murder case for quashing the criminal proceedings pending against NA-2 at Gwalior - Held - Applicant has locus standi to file application u/s 482 Cr.P.C. - Inherent power can be invoked to avoid conflicting judgment of two courts - Further proceedings in excise case stayed till the final decision of the murder trial - Application allowed. [Omprakash Yadav v. State of M.P.] ...292

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code, 1860, Section 188 - Complaint for violation of the Model Code of

सकती है (कुछ आधारों के दृष्टांत पैरा 8 में बताये गए हैं), किन्तु इस आधार पर रह नहीं की जा सकती कि परिवारी को नहीं सुना गया था। (रसिकलाल वि. किशोर) SC---11

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 438 व 439 - नियमित जमानत - अभिरक्षा - यद्यपि अगिम जमानत पर छोड़ने की स्वतंत्रता का उपभोग कर रहे अभियुक्त की ओर से नियमित जमानत प्रदान करने के लिए आवेदन किसी अधिवक्ता के माध्यम से प्रस्तुत किया जा सकता है, तथापि इसे केवल तब सुना और विनिश्चित किया जा सकता है जब अभियुक्त अभिरक्षा में हो। (सोनू उर्फ शहजाद वि. म.प्र. राज्य) ...758

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 438 व 439 - नियमित जमानत - अभिरक्षा - अंतरिम जमानत - नियमित जमानत के आवेदन की सुनवाई कर रहा न्यायालय उसका अंतिम निपटारा लम्बित रहते अंतरिम जमानत प्रदान करने की अन्तर्निहित शक्तियाँ रखता है - यदि केस डायरी की अनुपलब्धता के आधार पर अंतरिम जमानत प्रदान करने के लिए आवेदन किया जाता है तो न्यायालय को अंतरिम जमानत का आवेदन उसी दिन सुना और विनिश्चित किया जाना चाहिए। (सोनू उर्फ शहजाद वि. म.प्र. राज्य) ...758

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 438 व 439 - नियमित जमानत - अभिरक्षा - अभिरक्षा की पूर्ववर्ती शर्त को देखते हुए लोक अभियोजक द्वारा केस डायरी की अनुपलब्धता के आधार पर कोई स्थगन नहीं माँगा जाना चाहिए - अभियुक्त भी अभिरक्षा में अपने प्रस्तावित आत्मसमर्पण की तारीख कम से कम 3 दिन पहले ही से प्रकट कर सकता है (सोनू उर्फ शहजाद वि. म.प्र. राज्य) ...758

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 451 व 457 - देखें - मोटरयान कराधान अधिनियम, म.प्र., 1991, धारा 16 (हरदेव मोटर ट्रांसपोर्ट कं. (मे.) वि. म.प्र. राज्य)...852

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - परिवाद - याचिका के बिना अभिखंडित - चार पुलिस अधिकारियों ने प्रायवेत परिवाद और उनके विरुद्ध अन्वेषण करने के निदेश का अभिखंडन चाहते हुए याचिका-पेश की - अतिरिक्त पुलिस अधीक्षक ने ऐसी याचिका पेश नहीं की - अभिनिर्धारित - अतिरिक्त पुलिस अधीक्षक को सम्मिलित करते हुए पुलिस अधिकारियों के विरुद्ध अन्वेषण करने का कोई आधार नहीं है - न्यायालय की कार्यवाही का दुरुपयोग निवारित करने या अन्यथा न्याय का उद्देश्य प्राप्त करने की दृष्टि से अन्तर्निहित शक्तियों का अवलंब लेकर अतिरिक्त पुलिस अधीक्षक के विरुद्ध पेश परिवाद भी अभिखंडित किया गया। (अरूण कुमार जैन वि. दिनेश त्रिपाठी) ...707

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - सुने जाने का अधिकार - आवेदक की एफ.आई.आर. पर अनावेदक क्र. 2 के विरुद्ध हत्या का अपराध फिरोजाबाद में रजिस्टर किया गया - अनावेदक क्र. 2 को बचाने के लिए, ग्वालियर के पुलिस अधिकारियों ने अनावेदक क्र. 2 के विरुद्ध आबकारी अधिनियम के अन्तर्गत अपराध रजिस्टर किया - आवेदक/हत्या के मामले के सूचनादाता द्वारा अनावेदक क्र. 2 के विरुद्ध ग्वालियर में लम्बित दण्डिक कार्यवाहियों के अभिखंडन के लिए द.प्र.सं. की धारा 482 के अन्तर्गत आवेदन पेश किया गया - अभिनिर्धारित - आवेदक को द.प्र.सं. की धारा 482 के अन्तर्गत आवेदन पेश करने का अधिकार है - अन्तर्निहित शक्ति का प्रयोग दो न्यायालयों के परस्पर विरोधी निर्णय को टालने के लिए किया जा सकता है - आबकारी मामले में आगे की कार्यवाहियाँ हत्या के मामले के अंतिम विनिश्चय तक रोक दी गयीं - आवेदन मंजूर। (ओमप्रकाश यादव वि. म.प्र. राज्य) ...292

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता, 1860, धारा

Conduct - Number of seats available for admission were increased after the election to the State Legislative Assembly was announced - Such declaration would not fall within ambit of Clause VII(vi) of Model Code issued by Election Commission of India - Any violation of Model Code could only give rise to an election offence - Investigation of offence punishable u/s 188 IPC quashed. [Gautam Kalloo (Dr.) v. State of M.P.] ...536

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Quashment of F.I.R. registered against the Advocate - Whether a criminal case can be registered against an Advocate who had filed a civil suit on the instructions of his client - Held - FIR lodged by complainant against her husband and one Girija Devi that both of them made a conspiracy and filed a civil suit u/s 9 of Hindu Marriage Act, 1955 and obtained forged decree from Court - No allegation and iota of evidence that Advocate was also involved in conspiracy - Registration of case against Advocate illegal and erroneous - Petition allowed. [Mahesh Singh Tomar v. State of M.P.] ...*9

Criminal Procedure Code, 1973 (2 of 1974), Sections 482 & 436 - Cancellation of bail - A person accused of a bailable offence is entitled to be released on bail pending his trial, but he forfeits his right to be released on bail, if his conduct subsequent to his release is found to be prejudicial to a fair trial - This forfeiture can be made effective by invoking the inherent powers of the High Court u/s 482. [Rasiklal v. Kishore] SC...11

Criminal Trial - Principle of vicarious liability having no application in a prosecution which is to be lodged against superior officers. [Arun Kumar Jain v. Dinesh Tripathi] ...707

Development Authority Services (Officer and Servants) Recruitment Rules, M.P. 1987, Rules 2(b), 8 & 53 - See - Service Law [Ramesh Singh Thakur v. Jabalpur Development Authority] ...827

Dowry Prohibition Act (28 of 1961), Sections 4 & 6 - See - Criminal Procedure Code, 1973, Section 177 [Kirti Prakash Saxena v. State of M.P.]...539

Easements Act (5 of 1882), Section 52 - License - Ingredients - License is personal to grantor and licensee (grantee) - It is not annexed to the property in respect of which it is enjoyed and it is neither transferable nor heritable - It creates no duties and obligations upon the person making the grant - It also does not create an interest in the property. [R.V. Infrastructure Engineers Pvt. Ltd. v. State of MP] ...608

Electricity Supply Code, M.P. 2004, Section 4.17 - Application for new electric connection by house purchaser - Arrears of electricity due or other dues with regard to the same premises against erstwhile owner - Held - House purchaser could not get any benefit if the arrears of electric connection be not paid - Petition dismissed. [Mahila Kamla Dubey v. M.P. Vidyut Mandal, Gwalior] ...598

188 - आदर्श आचार संहिता के उल्लंघन के लिए परिवाद - राज्य विधान सभा के निर्वाचन की घोषणा के बाद प्रवेश के लिए उपलब्ध सीटों की संख्या बढ़ाई गयी - ऐसी घोषणा भारत के निर्वाचन आयोग द्वारा जारी आदर्श संहिता के खण्ड VII(vi) की परिधि के भीतर नहीं आयेगी - आदर्श संहिता के किसी उल्लंघन से केवल निर्वाचन अपराध पैदा हो सकता था - भा.द.सं. की धारा 188 के अन्तर्गत दण्डनीय अपराध का अन्वेषण अभिखंडित। (गौतम कल्लो (डॉ.) वि. म.प्र. राज्य) ...536

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - अधिवक्ता के विरुद्ध रजिस्टर एफ.आई.आर. का अभिखंडन - क्या किसी अधिवक्ता के विरुद्ध कोई दण्डित मामला रजिस्टर किया जा सकता है जिसने अपने मुकदमों के अनुदेशों पर सिविल वाद पेश किया था - अभिनिर्धारित - परिवादी द्वारा अपने पति और गिरजा देवी के विरुद्ध एफ.आई.आर. दर्ज करायी कि उन दोनों ने षड्यंत्र कर हिन्दू विवाह अधिनियम, 1955 की धारा 9 के अन्तर्गत सिविल वाद पेश किया और न्यायालय से कूटरचित डिक्री अभिप्राप्त की - कोई अभिकथन और साक्ष्य नहीं कि अधिवक्ता भी षड्यंत्र में अन्तर्गस्त था - अधिवक्ता के विरुद्ध मामला रजिस्टर करना अवैध और त्रुटिपूर्ण - याचिका मंजूर। (महेश सिंह तोमर वि. म.प्र. राज्य) ---*9

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 482 व 436 - जमानत का रद्दकरण - जमानतीय अपराध का कोई अभियुक्त व्यक्ति उसका विचारण लम्बित रहने के दौरान जमानत पर छोड़े जाने का हकदार है, किन्तु वह जमानत पर छोड़े जाने के अपने अधिकार को खो देता है, यदि उसके छोड़े जाने के पश्चातवर्ती उसका आचरण ऋजु विचारण पर प्रतिकूल प्रभाव डालने वाला पाया जाता है - यह समपहरण धारा 482 के अन्तर्गत उच्च न्यायालय की अन्तर्निहित शक्तियों का अवलम्ब लेकर प्रभावी किया जा सकता है। (रसिकलाल वि. किशोर) SC---11

दण्डित विचारण - प्रतिनिधिक दायित्व का सिद्धांत ऐसे अभियोजन में कोई उपयोगिता नहीं रखता जो वरिष्ठ अधिकारियों के विरुद्ध दर्ज किया जाना है। (अरुण कुमार जैन वि. दिनेश त्रिपाठी) ...707

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दहेज प्रतिषेध अधिनियम (1961 का 28), धाराएँ 4 व 6 - देखें - दण्ड प्रक्रिया संहिता, 1973, धारा 177 (कीर्ति प्रकाश सक्सेना वि. म.प्र. राज्य) ...539

सुखाचार अधिनियम (1882 का 5), धारा 52 - अनुज्ञप्ति - अवयव - अनुज्ञप्ति अनुदाता और अनुज्ञप्तिधारी (प्राप्तिकता) के लिए वैयक्तिक है - यह उल्लंघन सम्पत्ति से संलग्न नहीं है जिसके सम्बन्ध में इसका उपयोग किया जाता है और यह न तो अंतर्णीय है और न दाययोग्य - यह अनुदान करने वाले व्यक्ति पर कोई कर्तव्य या बाध्यताएँ सृष्ट नहीं करती - यह सम्पत्ति में कोई हित भी सृष्ट नहीं करती। (आर.व्ही. इन्फ्रास्ट्रक्चर इंजीनियर्स प्रा.लि. वि. म.प्र. राज्य) ...608

विद्युत आपूर्ति संहिता, म.प्र. 2004, धारा 4.17 - गृह क्रेता द्वारा नये विद्युत कनेक्शन के लिए आवेदन - उसी परिसर के सम्बन्ध में भूतपूर्व स्वामी के विरुद्ध विद्युत देय या अन्य देय के बकाया - अभिनिर्धारित - गृह क्रेता कोई लाभ प्राप्त नहीं कर सकता यदि विद्युत कनेक्शन के बकाया का भुगतान न किया जाए - याचिका खारिज। (महिला कमला दुबे वि. म.प्र. विद्युत मंडल, ग्वालियर) ...598

Essential Commodities Act (10 of 1955), Sections 7(1)(a)(ii) & 10-A, Criminal Procedure Code, 1973, First Schedule, Appendix "A" r/w S. 2(a) - Classification of offences against other laws - Under the E.C. (Special Provisions) Act (18 of 1981), the offences were made non-bailable by amending S. 10-A of E.C. Act - Now, the Act, 1981 is not in force and the amendment stands deleted automatically - Therefore, the provisions of Cr.P.C. are applicable - As per First Schedule, Appendix "A" r/w S. 2(a) of Cr.P.C., offences fall u/s 7(1)(a)(ii) of E.C. Act are cognizable and non-bailable. [Hariom v. State of M.P.] ...764

Evidence Act (1 of 1872), Section 3 - Appreciation of evidence - Defence plea - Love letters of accused recovered from the house of prosecutrix was suggestive that she was in love with the accused - Held - Such plea was neither raised by the accused in his examination u/s 313 of Cr.P.C. nor in the cross-examination of prosecution witnesses - Further, no love letter said to have been written by prosecutrix to the accused was tendered in evidence - Defence plea cannot be accepted. [Mohammad Hafeez v. State of M.P.]...261

Evidence Act (1 of 1872), Section 3 - Appreciation of evidence - Defence plea of alibi and alternative plea that accused was invited to her house by the prosecutrix only - These inconsistent and alternative pleas cannot be accepted - However, they strengthened the prosecution case. [Mohammad Hafeez v. State of M.P.] ...261

Evidence Act (1 of 1872), Section 3 - Child witness - Evidence of child witness must be evaluated more carefully and with greater circumspection - It is not law that if witness is child, his evidence shall be rejected even if it is found reliable. [Dagdulal v. State of M.P.] ...*6

Evidence Act (1 of 1872), Section 3 - Child witness - Reliability - Child witness has understood the true meaning of oath and necessity of speaking truth and has given rational answers to all the questions put to her - Not exhibited any intellectual incapacity to understand the nature of questions - No iota of doubt exist about tutoring by prosecution - Evidence reliable. [Mazboot Singh v. State of M.P.] ...674

Evidence Act (1 of 1872), Section 3 - Child witness - When there exists a reliable and trustworthy testimony of daughter of prosecutrix, it becomes difficult for Court to brush aside the testimony of the child witness. [Mazboot Singh v. State of M.P.] ...674

Evidence Act (1 of 1872), Section 3 - Circumstantial Evidence - It is the bounden duty of accused to explain the conduct - In case no explanation is offered or the explanation offered is found to be false - That provides additional link in the chain of circumstances so as to fasten the guilt of the accused. [Ramchandra Kahar v. State of M.P.] ...256

आवश्यक वस्तु अधिनियम (1955 का 10), धाराएँ 7(1)(ए)(ii) व 10-ए, दण्ड प्रक्रिया संहिता, 1973, प्रथम अनुसूची परिशिष्ट "ए" सहपठित धारा 2(ए) - अन्य विधियों के विरुद्ध अपराधों का वर्गीकरण - आवश्यक वस्तु (विशेष उपबंध) अधिनियम (1981 का 18) के अन्तर्गत आवश्यक वस्तु अधिनियम की धारा 10-ए को संशोधित कर अपराधों को गैर जमानतीय बनाया गया था - अब अधिनियम, 1981 प्रवर्तन में नहीं है और संशोधन स्वतः विलोपित हो गया है - इसलिए, द.प्र.सं. के उपबंध लागू होंगे - द.प्र.सं. की प्रथम अनुसूची, परिशिष्ट "ए" सहपठित धारा 2(ए) के उपबंधानुसार जो अपराध आवश्यक वस्तु अधिनियम की धारा 7(1)(ए)(ii) के अन्तर्गत आते हैं, संज्ञेय और गैर जमानतीय हैं। (हरिओम वि. म.प्र.राज्य) ...764

साक्ष्य अधिनियम (1872 का 1), धारा 3 - साक्ष्य का अधिमूल्यन - प्रतिरक्षा का अभिवचन - अभियोक्त्री के घर से बरामद अभियुक्त के प्रेम पत्र यह सुझाव देते हैं कि वह अभियुक्त से प्रेम करती थी - अभिनिर्धारित - ऐसा अभिवचन अभियुक्त ने न तो द.प्र.सं. की धारा 313 के अन्तर्गत अपनी परीक्षा में उठाया और न ही अभियोजन साक्षियों की प्रतिपरीक्षा में - इसके अतिरिक्त, अभियोक्त्री द्वारा अभियुक्त को लिखा जाना कथित किया गया कोई प्रेम पत्र साक्ष्य में निविदत्त नहीं किया गया - प्रतिरक्षा अभिवचन स्वीकार नहीं किया जा सकता। (मोहम्मद हफीज वि. म.प्र. राज्य) ...261

साक्ष्य अधिनियम (1872 का 1), धारा 3 - साक्ष्य का अधिमूल्यन - प्रतिरक्षा का अन्यत्र उपस्थित होने का अभिवचन और यह वैकल्पिक अभिवचन कि अभियुक्त को केवल अभियोक्त्री द्वारा उसके घर बुलाया गया - ये असंगत और वैकल्पिक अभिवचन स्वीकार नहीं किये जा सकते - तथापि, वे अभियोजन के मामले को दृढ़ बनाते हैं। (मोहम्मद हफीज वि. म.प्र. राज्य) ...261

साक्ष्य अधिनियम (1872 का 1), धारा 3 - बालक साक्षी - बालक साक्षी की साक्ष्य का मूल्यांकन अधिक सावधानीपूर्वक और बड़ी सतर्कता से करना चाहिए - यह विधि नहीं है कि यदि साक्षी बालक है तो उसकी साक्ष्य अस्वीकार कर दी जायेगी यद्यपि वह विश्वसनीय पायी गयी हो। (दगडू लाल वि. म.प्र. राज्य) ---*6

साक्ष्य अधिनियम (1872 का 1), धारा 3 - बालक साक्षी - विश्वसनीयता - बालक साक्षी ने शपथ और सत्य बोलने की आवश्यकता का सही अर्थ समझ लिया और उससे पूछे गये सभी प्रश्नों का युक्तिसंगत उत्तर दिया - प्रश्नों की प्रकृति समझने में कोई बौद्धिक असमर्थता प्रदर्शित नहीं की - अभियोजन द्वारा यंत्रणा देने के बारे में जरा भी संदेह विद्यमान नहीं - साक्ष्य विश्वसनीय। (मजबूत सिंह वि. म.प्र. राज्य) ...674

साक्ष्य अधिनियम (1872 का 1), धारा 3 - बालक साक्षी - जब अभियोक्त्री की पुत्री के विश्वसनीय और मरसे लायक परिसाक्ष्य का अस्तित्व हो, न्यायालय के लिए यह कठिन हो जाता है कि बालक साक्षी के परिसाक्ष्य की उपेक्षा की जाए। (मजबूत सिंह वि. म.प्र. राज्य) ...674

साक्ष्य अधिनियम (1872 का 1), धारा 3 - परिस्थितिजन्य साक्ष्य - यह अभियुक्त का बाध्यकारी कर्तव्य है कि आचरण को स्पष्ट करे - यदि कोई स्पष्टीकरण पेश नहीं किया जाता या पेश किया गया स्पष्टीकरण मिथ्या पाया जाता है - वह परिस्थितियों की श्रृंखला में अतिरिक्त कड़ी मुहैया कराती है ताकि अभियुक्त को दोषी ठहराया जाए। (रामचन्द्र कहार वि. म.प्र. राज्य) ...256

Evidence Act (1 of 1872), Section 3 - Circumstantial evidence - Law discussed. [State of M.P. v. Shankarlal] ...717

Evidence Act (1 of 1872), Section 3 - Circumstantial evidence - Motive - It is true that in a case of circumstantial evidence, motive does have extreme significance but to say that in the absence of motive, the conviction based on circumstantial evidence cannot, in principle, be made is not correct. [Jagdish v. State of MP] SC...310

Evidence Act (1 of 1872), Section 3, Penal Code, 1860, Section 302 - Appellant husband found in his house with a bloodstained knife beside the dead body of his wife and minor children - Medical evidence supported the prosecution case - Held - Circumstances forming a chain even stronger than an eye-witness account - Conviction of appellant on the charge of multiple murders was fully justified - Conviction and death sentence upheld - Appeal dismissed. [Jagdish v. State of MP] SC...310

Evidence Act (1 of 1872), Section 3 - Prosecutrix dead - Effect of non-examination - Merely because the prosecutrix was dead and consequently could not be examined, can never be a ground to acquit accused if there is evidence otherwise available proving the criminal act of the accused. [Mohammad Hafeez v. State of M.P.] ...261

Evidence Act (1 of 1872), Section 3 - See - Penal Code, 1860, Sections 302, 366, 364 & 376 [State of M.P. v. Shankarlal] ...717

Evidence Act (1 of 1872), Section 3 - See - Penal Code, 1860, Section 376 [Randhir Singh v. State of M.P.] ...485

Evidence Act (1 of 1872), Section 27 - How much of information received from accused may be proved - Law discussed. [State of M.P. v. Shankarlal] ...717

Evidence Act (1 of 1872), Section 27 - How much of information received from accused may be proved - Place where dead body was lying was already in the knowledge of the investigating agency - Recovery of empty liquor bottle from open and accessible place to everybody - Both circumstances are not incriminating circumstances. [State of M.P. v. Shankarlal] ...717

Evidence Act (1 of 1872), Section 27 - How much of information received from accused may be proved - Recovery of blue underwear - Seized underwear was not got identified by parents or other relatives of deceased by holding T.I.P. - Underwear not produced in Court and not got identified in Court - Recovery of blue underwear of no consequence - Appeal allowed. [State of M.P. v. Shankarlal] ...717

Evidence Act (1 of 1872), Section 32 - Dying Declaration - Authenticity - Nothing on record to indicate that Doctor who gave certificate and Executive Magistrate who recorded dying declaration had any animus

साक्ष्य अधिनियम (1872 का 1), धारा 3 — परिस्थितिजन्य साक्ष्य — विधि की विवेचना की गई। (म.प्र. राज्य वि. शंकरलाल) ...717

साक्ष्य अधिनियम (1872 का 1), धारा 3 — परिस्थितिजन्य साक्ष्य — हेतु — यह सही है कि परिस्थितिजन्य साक्ष्य के मामले में हेतु अत्यंत महत्व रखता है किन्तु सिद्धांततः यह कहना कि हेतु के अभाव में परिस्थितिजन्य साक्ष्य पर दोषसिद्धि आधारित नहीं की जा सकती, सही नहीं है। (जगदीश वि. म.प्र.राज्य) SC---310

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता, 1860, धारा 302 — अपीलार्थी पति अपने घर में रक्तरंजित चाकू के साथ अपनी पत्नी और अवयस्क बच्चों के पास में पाया गया — चिकित्सीय साक्ष्य ने अभियोजन मामले का समर्थन किया — अभिनिर्धारित — परिस्थितियाँ प्रत्यक्षदर्शी साक्षी के बयान से भी प्रबल श्रृंखला बनाती हैं — अनेक हत्याओं के आरोप पर अपीलार्थी की दोषसिद्धि पूर्णतः न्यायोचित — दोषसिद्धि और मृत्यु दण्डादेश की पुष्टि की गयी — अपील खारिज। (जगदीश वि. म.प्र.राज्य) SC---310

साक्ष्य अधिनियम (1872 का 1), धारा 3 — अभियुक्ती की मृत्यु — परीक्षा न कराने का प्रभाव — केवल इसलिए कि अभियुक्ती की मृत्यु हो गयी और परिणामस्वरूप उसकी परीक्षा नहीं करायी जा सकी, अभियुक्त को दोषमुक्त करने का आधार कमी नहीं हो सकता, यदि अभियुक्त के दाण्डिक कृत्य को साबित करने के लिए अन्यथा साक्ष्य उपलब्ध हो। (मोहम्मद हफीज वि. म.प्र. राज्य) ...261

साक्ष्य अधिनियम (1872 का 1), धारा 3 — देखें — दण्ड संहिता, 1860, धाराएँ 302, 366, 364 व 376, (म.प्र. राज्य वि. शंकरलाल) ...717

साक्ष्य अधिनियम (1872 का 1), धारा 3 — देखें — दण्ड संहिता, 1860, धारा 376 (रणधीर सिंह वि.म.प्र. राज्य) ...485

साक्ष्य अधिनियम (1872 का 1), धारा 27 — अभियुक्त से प्राप्त जानकारी में कितनी साबित की जा सकेगी — विधि की विवेचना की गई। (म.प्र. राज्य वि. शंकरलाल) ...717

साक्ष्य अधिनियम (1872 का 1), धारा 27 — अभियुक्त से प्राप्त जानकारी में कितनी साबित की जा सकेगी — स्थान, जहाँ शव पड़ा हुआ था, पहिले से अनुसंधान एजेंसी के ज्ञान में था — शराब की खाली बोतल की बरामदगी खुले और प्रत्येक व्यक्ति के लिए सुगम स्थान से — दोनों परिस्थितियाँ अपराध में फँसाने वाली नहीं हैं। (म.प्र. राज्य वि. शंकरलाल) ...717

साक्ष्य अधिनियम (1872 का 1), धारा 27 — अभियुक्त से प्राप्त जानकारी में कितनी साबित की जा सकेगी — नीले अंडरवियर की बरामदगी — बरामद अंडरवियर की शिनाख्त मृतक के माता-पिता या अन्य रिश्तेदारों की शिनाख्त परेड कराकर नहीं करायी गयी — अंडरवियर न्यायालय में पेश नहीं किया गया और न्यायालय में शिनाख्त नहीं करायी गयी — नीले अंडरवियर की बरामदगी का कोई परिणाम नहीं — अपील मंजूर। (म.प्र. राज्य वि. शंकरलाल) ...717

साक्ष्य अधिनियम (1872 का 1), धारा 32 — मृत्युकालिक कथन — प्रमाणिकता — यह उपदर्शित करने के लिए अभिलेख पर कुछ भी नहीं कि चिकित्सक जिसने प्रमाणपत्र दिया और कार्यपालक मजिस्ट्रेट जिसने मृत्युकालिक कथन अभिलिखित किया, अपीलार्थी के विरुद्ध कोई विद्वेष

or ill will against appellant - No reasons to suspect that Government Officials would manipulate dying declaration. [Indu Bai v. State of M.P.] ...*7

Evidence Act (1 of 1872), Section 32 - Dying Declaration - Fit state of mind - If person recording dying declaration is satisfied that deceased was in fit state of mind, dying declaration can be acted upon without examination of doctor. [Indu Bai v. State of M.P.] ...*7

Evidence Act (1 of 1872), Section 32 - See - Penal Code, 1860, Sections 304-B & 498-A, [Srikant v. State of M.P.] ...683

Evidence Act (1 of 1872), Section 32(1) - Just after the incident and before suicide, prosecutrix had described misdemeanour of the accused to eye-witness - Entire statement made by prosecutrix to eye-witness soon before her death was admissible u/s 32(1) of Act. [Mohammad Hafeez v. State of M.P.]...261

Evidence Act (1 of 1872), Section 32(1) - See - Penal Code, 1860, Section 498-A [Bhairon Singh v. State of M.P.] SC...301

Evidence Act (1 of 1872), Section 45 - When expert's evidence not helpful - Plaintiff's prayer to appoint an expert for comparison of signature of defendant on receipt was disallowed by the trial Court - Held - There was so many material contradictions in the plaintiff's version and that of his witnesses - Receipt is so much manipulated one and its due execution by defendant has also not been proved - In these circumstances, the expert evidence would not have tilted the balance at all in favour of plaintiff. [Shanti Rathore (Smt.) v. Radheshyam] ...932

Evidence Act (1 of 1872), Section 58 - Facts admitted need not be proved - Written statement containing admissions not withdrawn until closure of plaintiff's evidence - Defendant denying his signature on the written statement while appearing as witness of another defendant - Held - Plaintiff entitled to take benefit of admissions and not required to prove the sale deed which was admitted in the written statement to have been executed. [Sunil Kumar v. Dr. Om Prakash Garg] ...960

Evidence Act (1 of 1872), Sections 61, 67 & 81 - Document how to be proved - Plaintiff has admitted the fact of publication of the magazine but has denied the contents of magazine - In this background it becomes absolutely necessary for the defendant to summon the magazine and the prayer for calling the editor/publisher/maker of the magazine - Because without calling the maker the contents could neither be proved nor a presumption could be drawn in terms of S. 81 of the Evidence Act - Trial Court erred in not allowing the application - Petition allowed. [Jogendra Singh Pal v. Omprakash Gupta] ...896

Evidence Act (1 of 1872), Section 65 - See - Stamp Act, 1899, Section 35 [Vijay Choudhary v. Union of India] ...376

या वैमनस्य रखते थे - यह संदेह करने का कोई कारण नहीं कि शासकीय अधिकारियों ने मृत्युकालिक कथन में कोई छलसाधन किया होगा। (इन्दु बाई वि. म.प्र. राज्य) ---*7

साक्ष्य अधिनियम (1872 का 1), धारा 32 - मृत्युकालिक कथन - स्वस्थ मनःस्थिति - यदि मृत्युकालिक कथन अभिलिखित करने वाले व्यक्ति का यह समाधान हो जाता है कि मृतक की मनःस्थिति स्वस्थ थी, तो चिकित्सक की परीक्षा के बिना मृत्युकालिक कथन पर कार्यवाही की जा सकती है। (इन्दु बाई वि. म.प्र. राज्य) ---*7

साक्ष्य अधिनियम (1872 का 1), धारा 32 - देखें - दण्ड संहिता, 1860, धाराएँ 304-बी व 498-ए, (श्रीकांत वि. म.प्र. राज्य) ...683

साक्ष्य अधिनियम (1872 का 1), धारा 32(1) - घटना के तुरन्त बाद और आत्महत्या के पूर्व अभियोक्त्री ने प्रत्यक्षदर्शी साक्षी को अभियुक्त का उपाग्राह वर्णित किया था - अभियोक्त्री द्वारा अपनी मृत्यु के ठीक पूर्व प्रत्यक्षदर्शी साक्षी से किया गया सम्पूर्ण कथन अधिनियम की धारा 32(1) के अन्तर्गत ग्राह्य था। (मोहम्मद हफीज वि. म.प्र. राज्य) ...261

साक्ष्य अधिनियम (1872 का 1), धारा 32(1) - देखें - दण्ड संहिता, 1860, धारा 498-ए (मैरों सिंह वि. म.प्र. राज्य) SC---301

साक्ष्य अधिनियम (1872 का 1), धारा 45 - विशेषज्ञ की साक्ष्य कब सहायक नहीं - रसीद पर प्रतिवादी के हस्ताक्षर के मिलान के लिए विशेषज्ञ नियुक्त करने की वादी की प्रार्थना विचारण न्यायालय द्वारा नामंजूर की गई - अभिनिर्धारित - वादी और उसके साक्षियों के बयानों में बहुत ज्यादा तात्त्विक विरोधाभास था - रसीद में बहुत ज्यादा हेर-फेर था और प्रतिवादी द्वारा इसका सम्यक् निष्पादन किया जाना भी साबित नहीं किया गया - इन परिस्थितियों में विशेषज्ञ की साक्ष्य वादी के पक्ष में किसी भी प्रकार से सहायक नहीं हो सकती थी। (शांति राठौर (श्रीमति) वि. राधेश्याम) ...932

साक्ष्य अधिनियम (1872 का 1), धारा 58 - स्वीकृत तथ्यों को साबित किया जाना आवश्यक नहीं है - लिखित कथन में स्वीकृतियाँ अंतर्विष्ट थीं जो वादी साक्ष्य समाप्त होने तक वापस नहीं ली गयीं - प्रतिवादी ने अन्य प्रतिवादी के साक्षी के रूप में उपसंजात होते समय लिखित कथन पर अपने हस्ताक्षरों से इंकार किया - अभिनिर्धारित - वादी स्वीकृतियों का लाभ लेने का हकदार और उस विक्रय विलेख को साबित करना आवश्यक नहीं जिसे निष्पादित किया जाना लिखित कथन में स्वीकार कर लिया गया। (सुनील कुमार वि. डॉ. ओम प्रकाश गर्ग) ...960

साक्ष्य अधिनियम (1872 का 1), धाराएँ 61, 67 व 81 - दस्तावेज कैसे साबित करें - वादी ने पत्रिका के प्रकाशन के तथ्य को स्वीकार किया, परन्तु पत्रिका की अन्तर्वस्तु से इंकार किया - इस पृष्ठभूमि में प्रतिवादी के लिए यह आत्यंतिक रूप से आवश्यक हो जाता है कि पत्रिका समन क्रमादि और पत्रिका के संपादक/प्रकाशक/रचयिता को बुलवाने की प्रार्थना करे - क्योंकि रचयिता को बुलाये बिना अन्तर्वस्तु न तो साबित की जा सकती है और न ही साक्ष्य अधिनियम की धारा 81 के निबंधनों के अनुसार उपधारणा निकाली जा सकती है - विचारण न्यायालय ने आवेदन मंजूर न करने में गलती की - याचिका मंजूर। (जोगेन्द्र सिंह पॉल वि. ओमप्रकाश गुप्ता) ...896

साक्ष्य अधिनियम (1872 का 1), धारा 65 - देखें - स्टाम्प अधिनियम, 1899, धारा 35 (विजय चौधरी वि. यूनिनयन ऑफ इंडिया) ...376

Evidence Act (1 of 1872), Section 91 - See - *Specific Relief Act, 1963, Section 20* [Ammilal v. Kamla Bai] ...243

Evidence Act (1 of 1872), Section 106 - *Burden of proving fact especially within knowledge - Appellant and the deceased family members were the only occupants of the room - It was incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt.* [Jagdish v. State of M.P.] SC...310

Evidence Act (1 of 1872), Section 106 - *Burden of proving the fact which is especially within the knowledge of any person - Wife and daughter of accused died due to burn injuries - At the time of their death the accused was there in their company - It was incumbent upon the accused to have explained the facts which were in his exclusive knowledge as provided u/s 106 of Act - Prosecution by the evidence has not only established the presence of the accused in the company of deceased persons but the evidence also discloses the immediate conduct of the accused which unerringly points out that it was not a case of commission of suicide by deceased persons but accused has committed murder of them.* [Ramchandra Kahar v. State of M.P.]...256

Evidence Act (1 of 1872), Section 113-A - See - *Penal Code, 1860, Sections 306 & 498-A*, [Shriram v. State of M.P.] ...665

Evidence Act (1 of 1872), Sections 145 & 157 - *Complaint - Complainant not supporting prosecution case - Complaint made by him to CBI cannot be treated as substantive evidence - Former statement can be used for contradiction or corroboration - When complainant did not support prosecution story that demand was made by appellant, there was no substantive evidence - It was wrong on the part of trial Court to base decision on complaint made to CBI.* [Sanjay Kumar v. State of M.P.] ...490

Excise Act, M.P. (2 of 1915), Section 34(1)(a)(2) - *Conspicuous possession - Applicant registered owner of Tractor & Trolley - Liquor seized from Trolley and at the time of seizure no one was present with Tractor concerned - Prosecution failed to prove that from conspicuous possession of the applicant, the contraband article was seized - Applicant cannot be held guilty - Revision allowed.* [Sobran Singh v. State of M.P.] ...*10

Excise Policy 2010-2011, Foreign Liquor Rules, M.P. 1996, Rule 8(1)(a), Country Spirit Rules, M.P. 1995, Rule 9 - *Applications are being invited under new excise policy also - Provisions of new policy are not violative of M.P. Foreign Liquor Rules, 1996 and M.P. Country Spirit Rules, 1995.* [Chingalal Yadav v. State of M.P.] FB...788

Excise Policy 2010-2011, Foreign Liquor Rules, M.P. 1996, Rule 8(1)(a), Country Spirit Rules, M.P. 1995, Rule 9 - *It is open to State Government to renew the licence of existing licensee on such condition - New policy is a valid policy as same is not in contravention of Rule 8(1)(a)*

साक्ष्य अधिनियम (1872 का 1), धारा 91 — देखें — विनिर्दिष्ट अनुतोष अधिनियम, 1963, धारा 20, (अम्मीलाल वि. कमलाबाई) ...243

साक्ष्य अधिनियम (1872 का 1), धारा 106 — विशेषतः ज्ञात तथ्य को साबित करने का भार — केवल अपीलार्थी और मृत पारिवारिक सदस्य कमरे के अधिमोगी थे — अपीलार्थी बाध्य था कि उसके दोषी होने के किसी संदेह से बचने के लिए कोई स्पष्टीकरण निविदत्त करता। (जगदीश वि. म.प्र.राज्य) SC---310

साक्ष्य अधिनियम (1872 का 1), धारा 106 — उस तथ्य को साबित करने का भार जो विशेषतः किसी व्यक्ति के ज्ञान में हैं — अभियुक्त की पत्नी और पुत्री की मृत्यु जलने से आयी क्षतियों के कारण हुई — उनकी मृत्यु के समय अभियुक्त उनके साथ वहाँ मौजूद था — अभियुक्त उन तथ्यों को स्पष्ट करने के लिए बाध्य था जो अनन्ततः उसके ज्ञान में थे जैसा कि अधिनियम की धारा 106 के अन्तर्गत उपबंधित है — अभियोजन ने साक्ष्य से न केवल मृत व्यक्तियों के साथ अभियुक्त की उपस्थिति साबित की बल्कि साक्ष्य भी अभियुक्त का तुरन्त बाद का आचरण प्रकट करती है जो सुनिश्चित रूप से यह बताता है कि यह मृत व्यक्तियों द्वारा आत्महत्या करने का मामला नहीं था बल्कि अभियुक्त ने उनकी हत्या की है। (रामचन्द्र कहार वि. म.प्र. राज्य) ...256

साक्ष्य अधिनियम (1872 का 1), धारा 113-ए — देखें — दण्ड संहिता, 1860, धाराएँ 306 व 498-ए, (श्रीराम वि. म.प्र. राज्य) ...665

साक्ष्य अधिनियम (1872 का 1), धाराएँ 145 व 157 — परिवार — परिवारी ने अभियोजन मामले का समर्थन नहीं किया — उसके द्वारा सी.बी.आई. को किया गया परिवार सारभूत साक्ष्य नहीं माना जा सकता — पूर्ववर्ती कथन खण्डन या सम्पुष्टि के लिए प्रयुक्त किया जा सकता है — जब परिवारी ने अभियोजन की कहानी का समर्थन नहीं किया कि अपीलार्थी द्वारा मोंग की गयी थी, तब कोई सारभूत साक्ष्य नहीं थी — सी.बी.आई. को किये गये परिवार पर विनिश्चय आधारित करना विचारण न्यायालय के पक्ष पर गलत था। (संजय कुमार वि. म.प्र. राज्य) ...490

उत्पाद-शुल्क अधिनियम, म.प्र. (1915 का 2), धारा 34(1)(ए)(2) — सहजदृश्य कब्जा — आवेदक ट्रेक्टर व ट्रॉली का रजिस्ट्रीकृत स्वामी — ट्रॉली से शराब अभिग्रहीत की गयी और अभिग्रहण के समय संबंधित ट्रेक्टर के साथ कोई मौजूद नहीं था — अभियोजन यह साबित करने में असफल हो गया कि आवेदक के सहजदृश्य कब्जे से प्रतिबंधित पदार्थ अभिग्रहीत किया गया — आवेदक को दोषी नहीं ठहराया जा सकता — पुनरीक्षण मंजूर। (सोबरन सिंह वि. म.प्र. राज्य) ...*10

आबकारी पॉलिसी 2010-2011, विदेशी मदिरा नियम, म.प्र. 1996, नियम 8(1)(ए), देशी मद्य नियम, म.प्र. 1995, नियम 9 — नयी आबकारी पॉलिसी के अन्तर्गत भी आवेदन पत्र आमंत्रित किये जा रहे हैं — नयी पॉलिसी के उपबंध म.प्र. विदेशी मदिरा नियम, 1996 और म.प्र. देशी मद्य नियम, 1995 के उल्लंघनकारी नहीं हैं। (छिंगालाल यादव वि. म.प्र.राज्य) FB---788

आबकारी पॉलिसी 2010-2011, विदेशी मदिरा नियम, म.प्र. 1996, नियम 8(1)(ए), देशी मद्य नियम, म.प्र. 1995, नियम 9 — राज्य सरकार स्वतंत्र है कि ऐसी शर्त पर विद्यमान लायसेंसधारकों के लायसेंस को नवीकृत करे — नयी पॉलिसी विधिमाम्य पॉलिसी है क्योंकि वह

of M.P. Foreign Liquor Rules, 1996 and Rule 9 of M.P. Country Spirit Rules, 1995. [Chingalal Yadav v. State of M.P.] . FB...788

Family Courts Act (66 of 1984); Sections 19, 20 & 21, Civil Procedure Code, 1908, Order 43 Rule 1(a) - Appeal or Miscellaneous Appeal - Family Court directed to return of the plaint for presentation before the competent Court - Held - In view of the non-obstante clause incorporated in S. 19(1) of Act and the overriding effect of the Act as prescribed u/s 20 and conferral of power on High Court to make Rules for carrying out the purpose of Act - Appeal u/s 19 of Act shall lie and not miscellaneous appeal under Order 43 Rule 1(a) CPC. [Kamla Patel v. Neeraj Prasad Patel] ...253

Flag Code of India, 2002 - Flag Code is not a statute and cannot regulate fundamental right to fly National Flag. [Aamir Khan v. State of M.P.] ...736

Flag Code of India, 2002 - Flag Code is not a statute and cannot regulate fundamental right to fly National Flag. [J.P. Dutta v. Ravi Antarolia] ...729

Flag Code of India, 2002, Sections 2(B)(5), 3, 5, 6 & 11 - See - Prevention of Insults to National Honour Act, 1971, Sections 2 & 3 [Aamir Khan v. State of M.P.] ...736

Foreign Liquor Rules, M.P. 1996, Rule 8(1)(a), Country Spirit Rules, M.P. 1995, Rule 9 - Grant of licence in such other manner as directed by general or special order - "In such procedure which may be prescribed by the State Government from time to time" means that it empowers the Government to prescribe the mode of disposal of applications for grant of licence by renewal of applications submitted by existing licensees. [Chingalal Yadav v. State of M.P.] FB...788

General Sales Tax Act, M.P. 1958 (2 of 1959), Section 44 - Reference - Whether an Aadhatiya is liable to pay entry tax - Held - An Aadhatiya is nothing but a commission agent and he causes entry of the goods in the local area and he is liable to be taxed. [Sales Tax Commissioner v. M/s. Pannalal Narendra Kumar, Jabalpur] ...725

Hindu Law - Joint family property - Factum of proof - Determination - Plaintiff is required to establish that there was a sufficient nucleus which could have been the source of acquisition of property - Whole of the money required for the purchase of the property is not required to be proved. [Shyamlal v. Babulal] ...225

Hindu Law - Self acquired property - Factum of proof - Determination - It is sufficient in law that there is proof about the nucleus which could have been the source of the acquisition - Once the existence of such a nucleus is proved obviously it is for the person asserting his self acquired property to prove affirmatively that he acquired it from his own self acquired funds. [Shyamlal v. Babulal] ...225

म.प्र. विदेशी मदिरा नियम, 1996 के नियम 8(1)(ए) और म.प्र. देशी मद्य नियम, 1995 के नियम 9 के उल्लंघन में नहीं है। (छिंगालाल यादव वि. म.प्र.राज्य) FB---788

कुटुम्ब न्यायालय अधिनियम (1984 का 66), धाराएँ 19, 20 व 21, सिविल प्रक्रिया संहिता, 1908, आदेश 43 नियम 1(ए) — अपील या विविध अपील — कुटुम्ब न्यायालय ने सक्षम न्यायालय के समक्ष प्रस्तुत किये जाने के लिए वादपत्र लौटाने का निदेश दिया — अभिनिर्धारित — अधिनियम की धारा 19(1) में समाविष्ट सर्वोपरि खण्ड और धारा 20 में विहित अधिनियम के अध्यारोही प्रभाव और अधिनियम के प्रयोजन के कार्यान्वयन के लिए उच्च न्यायालय को प्रदत्त शक्ति को दृष्टिगत रखते हुए — अधिनियम की धारा 19 के अन्तर्गत अपील पोषणीय होगी न कि सि.प्र.सं. के आदेश 43 नियम 1(ए) के अन्तर्गत विविध अपील। (कमला पटेल वि. नीरज प्रसाद पटेल) ...253

भारतीय ध्वज संहिता, 2002 — ध्वज संहिता कोई कानून नहीं है और राष्ट्रध्वज फहराने के मूलभूत अधिकार को विनियमित नहीं कर सकती। (आमिर खान वि. म.प्र. राज्य) ...736

भारतीय ध्वज संहिता, 2002 — ध्वज संहिता कोई कानून नहीं है और राष्ट्रध्वज फहराने के मूलभूत अधिकार को विनियमित नहीं कर सकती। (जे.पी. दत्ता वि. रवि अंतरोलिया) ...729

भारतीय ध्वज संहिता, 2002, धाराएँ 2(बी)(5), 3, 5, 6 व 11 — देखें — राष्ट्र गौरव अपमान निवारण अधिनियम, 1971, धाराएँ 2 व 3, (आमिर खान वि. म.प्र. राज्य) ...736

विदेशी मदिरा नियम, म.प्र. 1996, नियम 8(1)(ए), देशी मद्य नियम, म.प्र. 1995, नियम 9 — ऐसे अन्य ढंग से लायसेंस का अनुदान जैसा सामान्य या विशेष आदेश द्वारा निदेशित किया जाए — “ऐसी प्रक्रिया से जो राज्य सरकार द्वारा समय-समय पर विहित की जाए” का अर्थ है कि यह सरकार को विद्यमान लायसेंसधारियों द्वारा पेश आवेदनों के नवीकरण द्वारा लायसेंस प्रदान करने के आवेदनों के निपटारे का ढंग विहित करने के लिए सशक्त करती है। (छिंगालाल यादव वि. म.प्र.राज्य) FB---788

साधारण विक्रय-कर अधिनियम, म.प्र. 1958 (1959 का 2), धारा 44 — निर्देश — क्या आदित्या प्रवेश कर अदा करने के लिए दायी है — अभिनिर्धारित — आदित्या कोई और नहीं बल्कि एक कमीशन अभिकर्ता है और वह स्थानीय क्षेत्र में माल का प्रवेश कराता है और वह कर के लिए दायी है। (सेल्स टेक्स, कमिश्नर वि. मे. पन्नालाल नरेन्द्र कुमार, जबलपुर) ...725

हिन्दू विधि — संयुक्त परिवार सम्पत्ति — सबूत का तथ्य — अवधारण — वादी को यह साबित करना आवश्यक है कि पर्याप्त केन्द्रक था जो सम्पत्ति के अर्जन का स्रोत हो सकता था — सम्पत्ति को क्रय करने के लिए अपेक्षित सम्पूर्ण धनराशि साबित किया जाना आवश्यक नहीं है। (श्यामलाल वि. बाबूलाल) ...225

हिन्दू विधि — स्वअर्जित सम्पत्ति — सबूत का तथ्य — अवधारण — विधि में यह पर्याप्त है कि केन्द्रक के बारे में सबूत हो जो अर्जन का स्रोत हो सकता था — जब एक बार ऐसे केन्द्रक का अस्तित्व साबित कर दिया जाता है तब प्रत्यक्षतः अपनी स्वअर्जित सम्पत्ति होने का दावा करने वाले व्यक्ति को सकारात्मक रूप से यह साबित करना होगा कि उसने उसे स्वयं की स्वअर्जित निधियों से अर्जित किया। (श्यामलाल वि. बाबूलाल) ...225

Hindu Marriage Act (25 of 1955), Section 19 - Court to which petition shall be presented - Territorial jurisdiction - Maintainability - Issue relating to maintainability of proceedings on the ground of lack of territorial jurisdiction is a mixed question of law & facts and can only be decided after recording of evidence. [Anjali Shukla (Smt.) v. Sunil Kumar Shukla] ...515

Hindu Marriage Act (25 of 1955), Section 19 - Court to which petition shall be presented - Territorial jurisdiction - Prayer of rejection of the plaint at the threshold - Scope of the scrutiny is extremely limited and only averments made in the plaint have to be seen. [Anjali Shukla (Smt.) v. Sunil Kumar Shukla]...515

Hindu Marriage Act (25 of 1955), Section 19 - Court to which petition shall be presented - Territorial jurisdiction - Preliminary issue - Issue relating to maintainability of proceedings on the ground of lack of territorial jurisdiction cannot be dealt with as preliminary issue. [Anjali Shukla (Smt.) v. Sunil Kumar Shukla] ...515

Hindu Marriage Act (25 of 1955), Section 19 - Residence - Meaning - The expression 'residence' does not mean temporary residence but the habitual residence or a residence which is intended to be permanent for future as well and apart from the actual period of stay, the intention of the parties is also required to be seen. [Anjali Shukla (Smt.) v. Sunil Kumar Shukla]...515

Interpretation of documents - Recital - Recitals in a document can never be conclusive - Substance of the term agreed upon and not the nomenclature given to the deed by the parties is material. [R.V. Infrastructure Engineers Pvt. Ltd. v. State of MP] ...608

Interpretation of Statute - Executive construction - Policy of renewal of existing licence has been in vogue since 2006-07 - Construction placed on ambiguous rule by State Government and continuing for a long period of time is an admissible aid to its interpretation and cannot be disregarded except for cogent reasons. [Chingalal Yadav v. State of M.P.] FB...788

Interpretation of Statute - Executive construction - Principle of executive construction is relevant as admissible aid for construction of a statutory provision which suffers from ambiguity. [Chingalal Yadav v. State of M.P.] FB...788

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 2(k) & 7-A - Juvenile - Opinion of Medical Board - When the opinion of the Medical Board is in confirmation with the established norms in the field of Medicine and Radiology, its opinion becomes primary evidence - Ossification test and exact opinion of Medical Board in relation to fusion of iliac bone gives conclusive evidence for reaching the conclusion about the age of person. [Banti @ Santosh v. State of M.P.] ...280

Krishi Upaj Mandi Adhiniyam, M.P., 1972, Sections 31 & 32 - See

हिन्दू विवाह अधिनियम (1955 का 25), धारा 19 - न्यायालय जिसमें याचिका पेश की जायेगी - क्षेत्रीय अधिकारिता - पोषणीयता - क्षेत्रीय अधिकारिता के अभाव के आधार पर कार्यवाहियों की पोषणीयता से सम्बन्धित विवाद्यक विधि और तथ्य का मिश्रित प्रश्न है और केवल साक्ष्य के अभिलेखन के बाद ही विनिश्चित किया जा सकता है। (अंजली शुक्ला (श्रीमति) वि. सुनील कुमार शुक्ला) ...515

हिन्दू विवाह अधिनियम (1955 का 25), धारा 19 - न्यायालय जिसमें याचिका पेश की जायेगी - क्षेत्रीय अधिकारिता - प्रारम्भ में वादपत्र की नामंजूरी की प्रार्थना - जाँच का क्षेत्र अत्यंत सीमित है और केवल वादपत्र में किये गये प्रकथनों को ही देखा जाना चाहिए। (अंजली शुक्ला (श्रीमति) वि. सुनील कुमार शुक्ला) ...515

हिन्दू विवाह अधिनियम (1955 का 25), धारा 19 - न्यायालय जिसमें याचिका पेश की जायेगी - क्षेत्रीय अधिकारिता - प्राथमिक विवाद्यक - क्षेत्रीय अधिकारिता के अभाव के आधार पर कार्यवाहियों की पोषणीयता से सम्बन्धित विवाद्यक को प्रारम्भिक विवाद्यक के रूप में नहीं बरता जा सकता। (अंजली शुक्ला (श्रीमति) वि. सुनील कुमार शुक्ला) ...515

हिन्दू विवाह अधिनियम (1955 का 25), धारा 19 - निवास - अर्थ - शब्द 'निवास' का अर्थ अस्थायी निवास नहीं है बल्कि सामान्य निवास या ऐसा निवास भी है जो भविष्य के लिए स्थायी होना आशयित है और रुकने की वास्तविक कालावधि के अलावा पक्षकारों का आशय भी देखा जाना अपेक्षित है। (अंजली शुक्ला (श्रीमति) वि. सुनील कुमार शुक्ला) ...515

दस्तावेजों का निर्वचन - परिवर्णन - दस्तावेज में परिवर्णन निश्चायक कभी नहीं हो सकता - अनुबंधित शर्त का सार न कि पक्षकारों द्वारा विलेख में दी गई नामावली तात्त्विक है। (आर. व्ही. इन्फ्रास्ट्रक्चर इंजीनियर्स प्रा.लि. वि. म.प्र. राज्य) ...608

कानून का निर्वचन - कार्यकारी अर्थान्वयन - विद्यमान लायसेंस के नवीकरण की पॉलिसी 2006-07 से प्रचलित हो गयी है - राज्य सरकार द्वारा संदिग्ध नियम का अर्थान्वयन करना और लम्बी कालावधि तक जारी रखना उसके निर्वचन के लिए एक ग्राह्य सहायता है और तर्कसंगत कारणों के सिवाय अमान्य नहीं की जा सकती। (छिंगालाल यादव वि. म.प्र.राज्य) FB...788

कानून का निर्वचन - कार्यकारी अर्थान्वयन - कार्यकारी अर्थान्वयन का सिद्धांत किसी कानूनी उपबंध, जो संदिग्धता से ग्रस्त है, के अर्थान्वयन के लिए ग्राह्य सहायता के रूप में सुसंगत है। (छिंगालाल यादव वि. म.प्र.राज्य) FB...788

किशोर न्याय (बालकों की देख-रेख और संरक्षण) अधिनियम (2000 का 56), धारा 2(के) व 7-ए - किशोर - मेडीकल बोर्ड की राय - जब मेडीकल बोर्ड की राय मेडीसिन और रेडियोलॉजी के क्षेत्र के स्थापित मानदण्डों की पुष्टि में है, तब उसकी राय प्राथमिक साक्ष्य बन जाती है - ऑसीफिकेशन टेस्ट और एलिक अस्थि के यूजन के सम्बन्ध में मेडीकल बोर्ड की निश्चित राय किसी व्यक्ति की आयु के सम्बन्ध में निष्कर्ष पर पहुँचने के लिए निश्चायक साक्ष्य होती है। (बन्टी उर्फ संतोष वि. म.प्र. राज्य) ...280

कृषि उपज मण्डी अधिनियम, म.प्र. 1972, धाराएँ 31 व 32 - देखें - कृषि गोदाम

- *Agricultural Warehouse Act, M.P., 1947, Section 3 [Jai Baba Devpuri Warehouse, Morena (M/s.) v. State of M.P.]* ...506

Land Acquisition Act (1 of 1894), Section 23 - Market value - Agricultural land acquired - Reference Court held that land having potentiality of being put to residential use - Reference Court assess the market value of land Rs. 2 lacs on the basis of Index Register of relevant period containing sales of adjoining land - Held - Reference Court ought to have deducted 30% on account of development charges while determining the market value of the land. [Land Acquisition Officer v. Jeet Singh] ...1001

Land Acquisition Act (1 of 1894), Section 23(1) - Circular issued u/s 48 of Stamp Act for fixing the market value for the purposes of registration bears no relevance to determine the market value u/s 23(1) of the Act. [Land Acquisition Officer v. Jeet Singh] ...1001

Land Acquisition Act (1 of 1894), Sections 28 & 34 - See - Civil Procedure Code, 1908, Order 41 Rule 33 [Land Acquisition Officer v. Jeet Singh] ...1001

Law of Torts - Negligence - Plaintiff has proved negligence on the part of Municipal Corporation in maintaining a public road in its proper condition which has resulted in accident - Consequently caused loss & damage to the plaintiff - Plaintiff is entitled to compensation for loss and injury suffered by him. [U.P. Sharma v. Jabalpur Corporation] ...231

Law of Torts - Vicarious liability - Compensation - Due to fault committed by the Board, petitioner's result was declared late - It resulted in the loss of entire year forcing the petitioner to reappear in the class XII examination - Single Judge awarded compensation of Rs. 25,000 for mental agony and loss of entire year - Writ Appeal - Held - Petitioner is innocent cannot become a victim because of fault of the Board - Board is vicarious liable to pay compensation to the grieved student - Judgement affirmed by D.B. - Writ Appeal dismissed. [Board of Secondary Education, Bhopal v. Rakesh Kewat] ...*3

Limitation Act (36 of 1963), Section 14(1) & (3), Civil Procedure Code, 1908, Order 23 Rule 2 & Order 2 Rule 2 - As per S. 14(3) of Act, the provisions of S. 14(1) shall apply in relation to a fresh suit instituted on permission granted by the Court under Order 23 Rule 1 - The leave of the Court is also contemplated to file suit in case relief has been omitted to be claimed with respect to same cause of action under Order 2 Rule 2 - S. 14(3) of Act does not provide for the exigencies contemplated under Order 2 Rule 2. [Hindustan Motors Ltd. (M/s.) v. D.R. Motors (M/s.)] ...215

Limitation Act (36 of 1963), Article 54 - Agreements initially were to execute sale deeds by 31.10.87 - On 01.04.94, defendant agreed to get the sale deed executed within a period of one month of his getting the permission

अधिनियम, म.प्र. 1947, धारा 3 (जय बाबा देवपुरी वेयरहाउस, मुरैना (मे.) वि. म.प्र. राज्य) ...506

भूमि अर्जन अधिनियम (1894 का 1), धारा 23 — बाजार मूल्य — कृषि भूमि अर्जित की गयी — निर्देश न्यायालय ने अभिनिर्धारित किया कि भूमि आवासिक उपयोग किये जाने की सामार्थ्य रखती है — निर्देश न्यायालय ने सुसंगत कालावधि के सूचक रजिस्टर, जिसमें लगी हुई भूमि के विक्रय अन्तर्विष्ट हैं, के आधार पर भूमि का बाजार मूल्य 2 लाख रुपये निर्धारित किया — अभिनिर्धारित — निर्देश न्यायालय को भूमि का बाजार मूल्य अवधारित करते समय विकास प्रभार मद्धे 30 प्रतिशत की कटौती करनी चाहिए थी। (लेण्ड एक्वीजीशन ऑफिसर वि. जीतसिंह) ...1001

भूमि अर्जन अधिनियम (1894 का 1), धारा 23(1) — रजिस्ट्रीकरण के प्रयोजन हेतु बाजार मूल्य निश्चित करने के लिए स्टाम्प अधिनियम की धारा 48 के अन्तर्गत जारी परिपत्र इस अधिनियम की धारा 23(1) के अन्तर्गत बाजार मूल्य अवधारित करने के लिए सुसंगत नहीं है। (लेण्ड एक्वीजीशन ऑफिसर वि. जीतसिंह) ...1001

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 28 व 34 — देखें — सिविल प्रक्रिया संहिता, 1908, आदेश 41 नियम 33 (लेण्ड एक्वीजीशन ऑफिसर वि. जीतसिंह) ...1001

अपकृत्य विधि — उपेक्षा — वादी ने सिद्ध किया कि नगर पालिक निगम ने लोक मार्ग को उपयुक्त दशा में रखने में उपेक्षा की जिसके परिणामस्वरूप दुर्घटना हुई — परिणामतः वादी को हानि और नुकसान कारित हुआ — वादी द्वारा जो हानि और क्षति वहन की गई उसके लिए वह प्रतिकर का हकदार है। (यू.पी. शर्मा वि. जबलपुर कारपोरेशन) ...231

अपकृत्य विधि — प्रतिनिधिक दायित्व — प्रतिकर — मण्डल द्वारा की गई भूल के कारण याची का परीक्षा परिणाम देरी से घोषित किया गया — इसके परिणामस्वरूप याची को पूरे एक साल का नुकसान हुआ और उसे मजबूरन कक्षा 12वीं की परीक्षा में पुनः बैठना पड़ा — एकल न्यायाधीश ने मानसिक त्रास और एक साल के नुकसान के लिए 25,000 रुपये प्रतिकर अधिनिर्णीत किया — रिट अपील — अभिनिर्धारित — याची निर्दोष है और उसे मण्डल की भूल के कारण शिकार नहीं बनाया जा सकता — मण्डल व्यथित छात्र को प्रतिकर अदा करने के लिए प्रतिनिधिक रूप से दायी है — खण्ड न्यायपीठ द्वारा निर्णय की पुष्टि की गई — रिट अपील खारिज। (बोर्ड ऑफ सेकण्डरी एजुकेशन, भोपाल वि. राकेश केवट) ---*3

परिसीमा अधिनियम (1963 का 36), धारा 14(1) व (3), सिविल प्रक्रिया संहिता, 1908, आदेश 23 नियम 2 व आदेश 2 नियम 2 — अधिनियम की धारा 14(3) के अनुसार, न्यायालय द्वारा आदेश 23 नियम 1 के अन्तर्गत प्रदान की गयी अनुमति पर संस्थित किये गये नये वाद के सम्बन्ध में धारा 14(1) के उपबन्ध लागू होंगे — यदि अनुतोष का लोप आदेश 2 नियम 2 के अन्तर्गत कर दिया गया है और उसी वाद कारण के सम्बन्ध में दावा पेश करना हो तो वाद पेश करने के लिए न्यायालय की इजाजत अपेक्षित है — अधिनियम की धारा 14(3), आदेश 2 नियम 2 के अन्तर्गत अपेक्षित अत्यावश्यकताओं का उपबन्ध नहीं करती। (हिन्दुस्तान मोटर्स लि. (मे.) वि. डी.आर. मोटर्स (मे.)) ...215

परिसीमा अधिनियम (1963 का 36), अनुच्छेद 54 — आरम्भ में करार 31.10.87 तक विक्रय विलेख निष्पादित करने के लिए थे — 01.04.1994 को प्रतिवादी सक्षम प्राधिकारी से अनुज्ञा प्राप्त करने के एक माह की कालावधि के भीतर विक्रय विलेख निष्पादित कराने के लिए सहमत हुआ

from competent authority - The endorsement exceeds the time fixed for execution of sale deeds - Suit filed on 29.01.1996 i.e. within 3 years of extension of the agreement - Suit is within limitation. [Rameshwarlal v. Dattatraya] ...970

Madhyamik Shiksha Mandal (Manyata) Viniyam, 2005 - See - Constitution, Article 226 [Ratna Prabha (Ku.) v. State of M.P.] ...387

Madhyastham Adhikaran Adhiniyam, M.P. (of 1983), Section 7(1) - See - Arbitration and Conciliation Act, 1996, Section 9 [Va Tech Escher Wyass Flovel Ltd. v. M.P.S.E. Board] SC...769

Motor Vehicles Act (59 of 1988), Section 163-A - Deceased borrowed Scooter from his father who was registered owner - Because of slip of Scooter deceased fell down and died due to head injury - L.Rs. of deceased stepped into the shoes of the owner - Owner could not himself be a recipient of compensation as liability to pay the same is on him - Claim petition rightly dismissed by tribunal. [Kiran Chhabra (Smt.) v. Hitesh Chhabra]...438

Motor Vehicles Act (59 of 1988), Section 166 - Award - Determination of compensation - Deceased 16 years of age - Tribunal holding that deceased was not an earning member and awarded minimum compensation of Rs.50,000 - Held - Deceased being 16 years of age and unmarried, 50% of the notional income to be the loss of annual dependency - Multiplier of 18 applied - Loss of total dependency comes to $7500 \times 18 = \text{Rs.} 1,35,000 + \text{Rs.} 10,000$ granted towards conventional heads. [Shyam Lal v. Madhu] ...996

Motoryan Karadhan Adhiniyam, M.P. (25 of 1991), Section 16, Criminal Procedure Code, 1973, Sections 451 & 457 - Motor vehicle seized u/s 16 of Act - Ss. 451 & 457 of Cr.P.C. are not attracted - Criminal Court will not have power to release the vehicle u/ss. 451 & 457 of Cr.P.C. [Hardeo Motor Transport Co. (M/s.) v. State of M.P.] ...852

Motoryan Karadhan Adhiniyam, M.P. (25 of 1991) [As amended w.e.f. 08.12.1999], Section 16(5) - See - Constitution, Article 14 [Hardeo Motor Transport Co. (M/s.) v. State of M.P.] ...852

Municipal Corporation Act, M.P. (23 of 1956), Section 66 - Accident due to stock of sand on public road - Claim for compensation against Corporation - Held - Corporation failed to discharge its duty in maintaining properly the road in safe condition and due to use of same plaintiff suffered injuries - Corporation is responsible to pay compensation for the loss or damage suffered by the plaintiff - Appeal allowed. [U.P. Sharma v. Jabalpur Corporation] ...231

Municipalities Act, M.P. (37 of 1961), Section 41-A - Removal of President or Chairman of a committee - Judicial review - High Court can go

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माध्यस्थम् अधिकरण अधिनियम, म.प्र., (1983 का), धारा 7(1) — देखें — माध्यस्थम् और सुलह अधिनियम, 1996, धारा 9, (वा टेक ऐशर व्यास फलोवेल लि. वि. एम.पी.एस. ई. बोर्ड) SC...769

मोटर यान अधिनियम (1988 का 59), धारा 163-ए — मृतक अपने पिता से, जो रजिस्टर्ड स्वामी थे, स्कूटर माँग कर ले गया — स्कूटर के फिसल जाने के कारण मृतक गिर पड़ा और सिर में आयी चोट के कारण उसकी मृत्यु हो गयी — मृतक के विधिक प्रतिनिधि स्वामी के स्थान पर आ गये — स्वामी स्वयं प्रतिकर का प्राप्तिकर्ता नहीं हो सकता क्योंकि उसका संदाय करने का दायित्व उसी पर है — अधिकरण द्वारा दावा ग्राहिका उचित रूप से खारिज की गयी। (किरण छाबड़ा (श्रीमति) वि. हितेश छाबड़ा) ...438

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मोटरयान कराधान अधिनियम, म.प्र. (1991 का 25) [08.12.1999 से यथासंशोधित], धारा 16(5) — देखें — संविधान, अनुच्छेद 14 (हरदेव मोटर ट्रांसपोर्ट कं. (मे.) वि. म.प्र. राज्य) ...852

नगर पालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 66 — सार्वजनिक सड़क पर रेत के संग्रह के कारण दुर्घटना — निगम के विरुद्ध प्रतिकर के लिए दावा — अभिनिर्धारित — निगम सड़क को समुचित रूप से सुरक्षित दशा में रखने के अपने कर्तव्य निर्वहन में असफल हो गया और उसके उपयोग के कारण वादी को क्षतियाँ आयीं — निगम वादी को हुई हानि या नुकसान के लिए प्रतिकर अदा करने के लिए उत्तरदायी है — अपील मंजूर। (यू.पी. शर्मा वि. जबलपुर कारपोरेशन) ...231

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 41-ए — समिति के समापति या अध्यक्ष का हटाया जाना — न्यायिक पुनर्विलोकन — उच्च न्यायालय कारणों की पर्याप्तता

into the sufficiency, adequacy and correctness of the reasons, and can also look into the sufficiency, adequacy and relevance of the material on the basis of which the opinion is formed by the State Government or conclusion is reached in respect of existence of ground to take an action u/s 41-A. [Baleshwar Dayal Jaiswal v. State of M.P.] ...111

Municipalities Act, M.P. (37 of 1961), Section 41-A - Removal of President or Chairman of a committee - Power of State Government - The manner in which it has to be exercised - S. 41-A does not give arbitrary, unbridled and discretionary power to the State Government to remove the elected President on trumped up charges not adequately proved or unreasonably accepted - State is required to form an opinion in respect of the misconduct or incapacity objectively. [Baleshwar Dayal Jaiswal v. State of M.P.] ...111

Municipalities Act, M.P. (37 of 1961), Section 41-A - Removal of President or Chairman of a committee - Powers when can be exercised - Since the exercise of power u/s 41-A has serious consequence, therefore, it can be invoked only for very strong and weighty reasons and the material on the basis of which such action taken must justify such a serious action. [Baleshwar Dayal Jaiswal v. State of M.P.] ...111

Municipalities Act, M.P. (37 of 1961), Section 41-A - Removal of President or Chairman of a committee - Opinion or finding of the State Government formed or recorded must be based upon some cogent material which should be adequate to form such an opinion or reach to the conclusion as required by the section and such a material should be reflected in the order of removal. [Baleshwar Dayal Jaiswal v. State of M.P.] ...111

Municipalities Act, M.P. (37 of 1961), Section 43-A(2)(ii) - Notice - No confidence motion against Vice-President - The requirement of section is that the notice should be despatched to the President and every Councillor ten clear days before the meeting and does not mandate service of notice ten clear days before the meeting. [Anis Beg v. State of M.P.] ...136

Municipalities Act, M.P. (37 of 1961), Section 323 - Powers to suspend execution of orders, etc of Council - S. 323(1) indicates that two circumstances are required to be fulfilled - First is that the Collector is required to pass an order whether the action which is challenged is not in conformity with law or with the rules or byelaws made thereunder - Second is that such an action is detrimental to the interests of the Council or public or is likely to cause injury or annoyance to the public or any class or body of persons or is likely to lead to a breach of the peace - Without recording such finding, Collector has proceeded to set-aside resolution only on the ground that action was not bona fide - Collector's order set-aside. [Nagar Palika Parishad, Balaghat v. Rajesh Bhoj] ...185

यथायोग्यता और शुद्धता पर विचार कर सकता है और उस सामग्री की पर्याप्तता, यथायोग्यता और सुसंगतता को भी देख सकता है जिसके आधार पर राज्य सरकार द्वारा धारा 41-ए के अन्तर्गत कार्यवाही करने के लिए आधार के अस्तित्व के बारे में राय बनायी गयी या निष्कर्ष निकाला गया। (बालेश्वर दयाल जायसवाल वि. म.प्र. राज्य) ...111

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 41-ए - समिति के समापति या अध्यक्ष का हटाया जाना - राज्य सरकार की शक्ति - ढंग जिसमें इसे प्रयोग किया जाना है - धारा 41-ए राज्य सरकार को पर्याप्त रूप से साबित न किये गये या अयुक्तियुक्त रूप से स्वीकार किये गये निरर्थक आरोपों पर चुने हुए समापति को हटाने की मनमानी, अनियंत्रित और विवेकाधीन शक्ति प्रदान नहीं करती है - राज्य को कदाचरण या असक्षमता के सम्बन्ध में निष्कर्ष रूप से राय बनाना आवश्यक है। (बालेश्वर दयाल जायसवाल वि. म.प्र. राज्य) ...111

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 41-ए - समिति के समापति या अध्यक्ष का हटाया जाना - शक्तियाँ कब प्रयोग की जा सकती हैं - चूंकि धारा 41-ए के अन्तर्गत शक्ति के प्रयोग के गम्भीर परिणाम हैं, इसलिए केवल अत्यंत सशक्त और ठोस कारणों से इसका अवलम्ब लिया जा सकता है और सामग्री जिसके आधार पर ऐसी कार्यवाही की गई, से ऐसी गम्भीर कार्यवाही को न्यायोचित ठहराना चाहिए। (बालेश्वर दयाल जायसवाल वि. म.प्र. राज्य)...111

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 41-ए - समिति के समापति या अध्यक्ष का हटाया जाना - राज्य सरकार की बनायी गयी राय या अभिलिखित किये गये निष्कर्ष किसी तर्कपूर्ण सामग्री पर आधारित होना चाहिए जो धारा द्वारा अपेक्षित ऐसी राय बनाने या निष्कर्ष पर पहुँचने के लिए पर्याप्त होना चाहिए और ऐसी सामग्री हटाये जाने के आदेश में प्रतिबिम्बित होनी चाहिए। (बालेश्वर दयाल जायसवाल वि. म.प्र. राज्य) ...111

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 43-ए(2)(ii) - सूचनापत्र - उपाध्यक्ष के विरुद्ध अविश्वास प्रस्ताव - धारा की अपेक्षा है कि अध्यक्ष और प्रत्येक नगरपालिका सदस्य को दस पूर्ण दिवस पूर्व बैठक का सूचनापत्र प्रेषित किया जाना चाहिए बैठक की तारीख के दस पूर्ण दिवस पूर्व सूचनापत्र की तामील आज्ञापक नहीं है। (अनीस बेग वि. म.प्र. राज्य) ...136

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 323 - परिषद् के आदेशों आदि के निष्पादन को निर्लंबित करने की शक्ति - धारा 323(1) उपदर्शित करती है कि दो परिस्थितियाँ पूरी की जाना अपेक्षित है - प्रथम यह कि कलेक्टर को आदेश पारित करना आवश्यक है चाहे कृत्य जिसे चुनौती दी गई है विधि या उसके अधीन बनाए गए नियमों या उपविधियों के अनुरूप न हो - द्वितीय यह कि ऐसा कृत्य परिषद् या लोकहितों के लिए अपायकर है या लोक या व्यक्तियों के किसी वर्ग या निकाय को क्षति या क्षोभ होने की संभाव्यता है या उससे शांति भंग होने की संभाव्यता है - ऐसा निष्कर्ष अभिलिखित किये बिना कलेक्टर केवल इस आधार पर संकल्प अपास्त करने के लिए अग्रसर हुआ कि कृत्य सद्भावनापूर्ण नहीं था - कलेक्टर का आदेश अपास्त। (नगरपालिका परिषद, बालाघाट वि. राजेश भोज) ...185

Municipalities Act, M.P. (37 of 1961), Section 323 - Powers to suspend execution of orders, etc of Council - Without assigning any reasons, Collector cancelled the tender proceedings which were passed in a resolution - Held - Collector has only power to stay but has no power to annul the resolution - Resolution, as per S. 323(2) has to be annulled by the State Government after giving due opportunity to the Council - Collector's order quashed. [Nagar Palika Parishad, Balaghat v. Rajesh Bhoj] ...185

National Highways Act (48 of 1956), Section 9, National Highways (Fees for the use of National Highway Section and Permanent Bridge - Public Funded Project) Rules, 1997, Rule 11 - Vires of Rule 11 challenged - Held - Rule 11 which provides that the fee shall be collected in perpetuity by the executing agency is bad - However, the agency would be entitled to recover cost of the road/bridge or for its maintenance or its upkeep provided the original cost is not recovered and the executing agency comes out with a clear case that for maintenance etc of a road/bridge, certain tolls are required to be imposed - In Rule 11 'in perpetuity' held ultra vires. [Truck Owners Association v. State of M.P.] ...364

Natural Justice - Principle of natural justice is not a 'mantra' to be applied in vacuum in all cases - They are not required to be complied with when it will lead to an empty formality. [Rasik Lal v. Kishore] SC...11

Negotiable Instruments Act (26 of 1881), Section 138 - Presumption - Service of notice - Complainant sent notice to accused by registered post with A.D. and U.P.C. on correct address - Accused is Ex-Sarpanch of the village - The endorsement of the postman to the effect that he has visited the house of accused seven times for service of notice but accused was not available at the time of delivery - Presumption ought to have been drawn in favour of complainant about service of notice. [Babulal v. Gafur] ...*1

Notaries Act (53 of 1952), Section 3, Notaries Rules, 1956, Rules 7 & 8 - Appointment of Notary - Criterion - Held - State Government while appointing a Notary must have to consider a panel so prepared as per merits of the candidates strictly in consonance with provisions of the Act and the Rules made there under and also the law laid down in various judgments delivered on the subject matter. [Kedar Nath Sharma v. State of MP] ...62

Notaries Act (53 of 1952), Section 8 - Authentication of promissory note by Notary - Meaning - Notary is not an attesting witness - Function of Notary is to authenticate document to attest so as to ensure about as to the authenticity of the document, that would not make the Notary or registering officer or as the case may be or identifier an attesting witness. [Ram Kishan Dwivedi v. Rohni Prasad Tiwari] ...123

Notaries Rules, 1956, Rules 7 & 8 - See - Notaries Act, 1952, Section 3 [Kedar Nath Sharma v. State of MP] ...62

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 323 - परिषद् के आदेशों आदि के निष्पादन को निलंबित करने की शक्ति - कलेक्टर ने कोई कारण समनुदेशित किये बिना निविदा कार्यवाहियाँ विखंडित कीं जो एक संकल्प में पारित की गयीं थीं - अभिनिर्धारित - कलेक्टर को केवल रोकने की शक्ति है किन्तु संकल्प को विखंडित करने की शक्ति नहीं है - धारा 323(2) के अनुसार राज्य सरकार द्वारा परिषद् को उचित अवसर देकर संकल्प विखंडित किया जाना चाहिए - कलेक्टर का आदेश अभिखंडित। (नगरपालिका परिषद्, बालाघाट वि. राजेश भोज) ...185

राष्ट्रीय राजमार्ग अधिनियम (1956 का 48), धारा 9, राष्ट्रीय राजमार्ग (राष्ट्रीय राजमार्ग खण्ड और स्थायी पुल के उपयोग के लिए फीस - लोक निधि परियोजना) नियम, 1997, नियम 11 - नियम 11 की शक्तिमत्ता को चुनौती दी गई - अभिनिर्धारित - नियम 11, जो यह उपबंधित करता है कि निष्पादन एजेंसी द्वारा फीस शाश्वत रूप से संग्रहीत की जायेगी, दोषपूर्ण है - तथापि, एजेंसी सड़क/पुल की लागत या उसके अनुरक्षण के लिए या उसकी मरम्मत के लिए वसूल करने की हकदार होगी बशर्ते मूल लागत वसूल नहीं हो जाती और निष्पादन एजेंसी इस स्पष्ट मामले के साथ आती है कि सड़क/पुल के अनुरक्षण आदि के लिए कतिपय पथकर अधिरोपित किया जाना आवश्यक है - नियम 11 में 'शाश्वत रूप से' को अधिकारातीत अभिनिर्धारित किया गया। (ट्रक ऑनर्स एसोसिएशन वि. म.प्र. राज्य) ...364

नैसर्गिक न्याय - नैसर्गिक न्याय का सिद्धांत कोई मंत्र नहीं है जो सभी मामलों में निर्वात में लागू किया जाए - उनका अनुपालन किया जाना अपेक्षित नहीं है जबकि वह केवल औपचारिकता मात्र हो। (रसिकलाल वि. किशोर) SC---11

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 - उपधारणा - सूचनापत्र की तामील - परिवादी ने अभियुक्त को रजिस्टर्ड पोस्ट मय ए.डी. और यू.पी.सी. से सही पते पर सूचनापत्र भेजा - अभियुक्त गाँव का पूर्व सरपंच है - डाकिये का इस आशय का पृष्ठांकन कि वह सूचनापत्र की तामील के लिए सात बार अभियुक्त के घर गया किन्तु परिदान के समय अभियुक्त उपलब्ध नहीं था - परिवादी के पक्ष में सूचनापत्र की तामील के बारे में उपधारणा की जानी चाहिए थी। (बाबूलाल वि. गफूर) ---*1

नोटरी अधिनियम (1952 का 53), धारा 3, नोटरी नियम, 1956, नियम 7 व 8 - नोटरी की नियुक्ति - मानदण्ड - अभिनिर्धारित - राज्य सरकार को नोटरी की नियुक्ति के समय अभ्यर्थियों की मेरिट के अनुसार तैयार किये गये पैनल पर अधिनियम और उसके अधीन बनाये गये नियमों के उपबंधों और विषयवस्तु पर दिये गये विभिन्न निर्णयों में निर्धारित विधि के अनुकूल सर्वथा विचार करना चाहिए। (केदारनाथ शर्मा वि. म.प्र. राज्य) ...62

नोटरी अधिनियम (1952 का 53), धारा 8 - नोटरी द्वारा प्रॉमिसरी नोट का प्रमाणीकरण - अर्थ - नोटरी अनुप्रमाणक साक्षी नहीं है - नोटरी का कार्य अनुप्रमाणित करने के लिए दस्तावेज को प्रमाणित करना है ताकि दस्तावेज की प्रमाणिकता सुनिश्चित की जाए, जो नोटरी या रजिस्ट्रीकर्ता अधिकारी या यथास्थिति या पहचान करने वाले को अनुप्रमाणक साक्षी नहीं बनायेगा। (रामकिशन द्विवेदी वि. रोहनी प्रसाद तिवारी) ...123

नोटरी नियम, 1956, नियम 7 व 8 - देखें - नोटरी अधिनियम, 1952, धारा 3, (केदारनाथ शर्मा वि. म.प्र. राज्य) ...62

Nuisance - Remedies under civil and criminal law - Law discussed.
[Shivraj Singh v. State of M.P.] ...742

Panchayat (Method of Service of Notice and Document) Rules, 1995, Rule 3 - Proper service of notice - Rule 3 provided elaborate procedure for services of notice to any person - Thus, notice has to be served in accordance with the statutory provision - Service of notice in any manner contrary to statutory rules is not permissible. [Uttam Singh v. State of M.P.]...891

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 86(1) - Gram Panchayat appointed Panchayat Karmi - SDO set-aside the order of appointment in appeal - Collector directed appointment by fresh advertisement u/s 86(1) - Held - Collector (Prescribed Authority) can not issue such direction unless there is willful default or negligence on the part of Gram Panchayat in performing its duties of filling the post - Order of learned Single Judge setting-aside order of Collector upheld - Writ Appeal dismissed. [Brajesh Sharma v. Nagendra Singh Sisodiya] ...550

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122, Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 80 - Recount - Not permissible - Election Tribunal ordering for recount on the basis of scarcity of light and overwriting on the declaration form issued which cannot be a ground for recount but are grounds for generally challenging the election of the returned candidate under the provision of the Rules. [Gyanendra @ Chotu v. Anoop Chand] ...341

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122, Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 80 - Recount - Permissibility - Held - An order of recount can be made only on the basis of clear and specific pleading supported by clear evidence to the effect that the ballot papers of a particular booth had been wrongly accepted or rejected which would have immediately affected the result of the election. [Gyanendra @ Chotu v. Anoop Chand] ...341

Panchayat Service (Discipline and Appeal) Rules, M.P. 1999, Rule 2(f) & (j) - Member of Panchayat Service or a Panchayat Servant means any person appointed to the Panchayat Service - According to Rule 2(j) Panchayat Service means any Panchayat Service - Thus, the Panchayat Karmis are also included in the Panchayat Service and they are Panchayat Servants within the meaning of Rule 2(f) of the Rules. [Uttam Singh v. State of M.P.] ...891

Panchayat Service (Discipline and Appeal) Rules, M.P. 1999, Rule 7 - Termination - Natural Justice - Petitioner removed from the post of Panchayat Karmi without holding an enquiry merely by passing a resolution - Petitioner is Panchayat Servant within the meaning of Rule 2(f) of the Rules

न्यूसेंस - सिविल एवं दाण्डिक विधि के अन्तर्गत उपचार - विधि की विवेचना की गई।
(शिवराज सिंह वि. म.प्र. राज्य) ...742

पंचायत (सूचना पत्र और दस्तावेज की तामील का ढंग) नियम, 1995, नियम 3 - सूचना पत्र की समुचित तामील - नियम 3 किसी व्यक्ति पर सूचना पत्र की तामील के लिए विस्तृत प्रक्रिया उपबंधित करता है - इस प्रकार सूचना पत्र की तामील कानूनी उपबंध के अनुसार की जानी चाहिए - कानूनी नियमों के विरुद्ध किसी ढंग से सूचना पत्र की तामील अनुज्ञेय नहीं है।
(उत्तम सिंह वि. म.प्र. राज्य) ...891

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 86(1) - ग्राम पंचायत ने पंचायत कर्मों की नियुक्ति की - एस.डी.ओ. ने अपील में नियुक्ति आदेश अपास्त किया - कलेक्टर ने धारा 86(1) के अन्तर्गत नये विज्ञापन द्वारा नियुक्ति का निदेश दिया - अभिनिर्धारित - कलेक्टर (विहित प्राधिकारी) ऐसे निदेश जारी नहीं कर सकता जब तक कि ग्राम पंचायत की ओर से पद भरने के कर्तव्यों के पालन में जानबूझकर व्यतिक्रम या उपेक्षा न की गई हो - कलेक्टर के आदेश को अपास्त करने वाले विद्वान एकल न्यायाधीश के निर्णय की पुष्टि की गयी - रिट अपील खारिज। (ब्रजेश शर्मा वि. नागेन्द्र सिंह सिसोदिया) ...550

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122, पंचायत (निर्वाचन अर्जियाँ, भ्रष्टाचार और सदस्यता के लिए निरर्हता) नियम, म.प्र. 1995, नियम 80 - पुनर्गणना - अनुज्ञेय नहीं - निर्वाचन अधिकरण ने पुनर्गणना का आदेश प्रकाश के अभाव और जारी किये गये घोषणापत्र पर अधिलेखन (overwriting) के आधार पर दिया था, जो पुनर्गणना के लिए आधार नहीं हो सकता है बल्कि निर्वाचित उम्मीदवार के निर्वाचन को नियमों के उपबंध के अन्तर्गत सामान्यतः चुनौती देने के लिए आधार हैं। (ज्ञानेन्द्र उर्फ छोटू वि. अनूप चंद) ...341

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122, पंचायत (निर्वाचन अर्जियाँ, भ्रष्टाचार और सदस्यता के लिए निरर्हता) नियम, म.प्र. 1995, नियम 80 - पुनर्गणना - अनुज्ञेयता - अभिनिर्धारित - पुनर्गणना का कोई आदेश केवल स्पष्ट और विनिर्दिष्ट अभिवचन तथा स्पष्ट साक्ष्य से समर्थित होने के आधार पर किया जा सकता है कि किसी विशिष्ट बूथ के मतपत्र गलत रूप से स्वी.त या अस्वी.त किये गये थे, जो अव्यवहित रूप से चुनाव के परिणाम को प्रभावित करते। (ज्ञानेन्द्र उर्फ छोटू वि. अनूप चंद)...341

पंचायत सेवा (अनुशासन और अपील) नियम, म.प्र. 1999, नियम 2(एफ) व (जे) - पंचायत सेवा का सदस्य या पंचायत कर्मचारी का अर्थ है वह व्यक्ति जो पंचायत सेवा में नियुक्त है - नियम 2(जे) के अनुसार पंचायत सेवा का अर्थ है कोई भी पंचायत सेवा - इसलिए पंचायत कर्मों भी पंचायत सेवा में समाविष्ट हैं और नियमों के नियम 2(एफ) के अर्थ में वे पंचायत कर्मचारी हैं। (उत्तम सिंह वि. म.प्र. राज्य) ...891

पंचायत सेवा (अनुशासन और अपील) नियम, म.प्र. 1999, नियम 7 - सेवा समाप्ति - प्राकृतिक न्याय - याची को बिना जाँच कराए केवल प्रस्ताव पारित कर पंचायतकर्मों के पद से हटाया गया - याची नियमों के नियम 2(एफ) के अर्थ में पंचायत कर्मचारी है और वह

and enjoys the protection of Rules of 1999 - In the absence of any enquiry as contained in Rule 7, the impugned orders are illegal and they are liable to be quashed. [Uttam Singh v. State of M.P.] ...891

Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rules 3 & 8 - Non-compliance of Rule 3(2) - Effect - Election Tribunal has recorded categorical findings that the copies of the election petition served on the respondent did not bear his signatures, were not verified and did not bear attestation as required by Rule 3(2) and has accordingly dismissed the election petition - No fault found in the finding - Petition dismissed. [Bajjulal Verma v. Additional Collector, Chhindwara] ...129

Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rules 3 & 8 - Non-compliance Rule 3(2) - Objection can be raised and decided at any stage - Election Tribunal can take and decide the issue regarding defect of non-compliance of the rules at any stage and it is not incumbent upon the authority to do so only at the threshold - There can be no waiver of the requirement of Rule 8 and failure of the authority to dismiss the petition at the threshold would not prohibit or prevent the authority from doing so at the later stage. [Bajjulal Verma v. Additional Collector, Chhindwara] ...129

Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 80 - See - Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122 [Gyanendra @ Chotu v. Anoop Chand] ...341

Penal Code (45 of 1860), Section 84 - Act of a person of unsound mind - Plea with regard to appellant's mental condition based exclusively on the statements made by his close family members - Plea taken for first time before Apex Court at the SLP stage only - Appellant not entitled for any benefit. [Jagdish v. State of M.P.] SC...310

Penal Code (45 of 1860), Section 109 - See - Prevention of Insults to National Honour Act, 1971, Sections 2 & 3, [Aamir Khan v. State of M.P.]...736

Penal Code (45 of 1860), Section 188 - See - Criminal Procedure Code, 1973, Section 482, [Gautam Kalloo (Dr.) v. State of M.P.] ...536

Penal Code (45 of 1860), Section 302 - See - Evidence Act, 1872, Section 3 [Jagdish v. State of M.P.] SC...310

Penal Code (45 of 1860), Section 302 or 306 - Murder or Suicide - Wife and daughter of accused died due to burn injuries - At the time of their death the accused was there in their company - Accused did not raise hue and cry to call the neighbours and not tried to save the deceased persons - On the contrary, he failed to answer the query made by his son as to how

1999 के नियमों के संरक्षण का उपभोग करता है - नियम 7 में अन्तर्विष्ट किसी जाँच के अभाव में आक्षेपित आदेश अवैध हैं और वे अभिखंडित किये जाने योग्य हैं। (उत्तम सिंह वि. म.प्र. राज्य)...891

पंचायत (निर्वाचन अर्जियाँ, भ्रष्टाचार और सदस्यता के लिए निरर्हता) नियम, म.प्र. 1995, नियम 3 व 8 - नियम 3(2) का अननुपालन - प्रभाव - निर्वाचन अधिकरण ने सुस्पष्ट निष्कर्ष अभिलिखित किये कि प्रत्यर्थी पर तामील की गई निर्वाचन याचिका की प्रतिलिपियों पर उसके हस्ताक्षर नहीं थे, सत्यापित नहीं थीं और नियम 3(2) द्वारा अपेक्षित अनुप्रमाणन नहीं था और तदनुसार निर्वाचन याचिका खारिज कर दी - निष्कर्ष में कोई दोष नहीं पाया - याचिका खारिज। (बैजूलाल वर्मा वि. एडीशनल कलेक्टर, छिंदवाड़ा) ...129

पंचायत (निर्वाचन अर्जियाँ, भ्रष्टाचार और सदस्यता के लिए निरर्हता) नियम, म.प्र. 1995, नियम 3 व 8 - नियम 3(2) का अननुपालन - आपत्ति किसी भी प्रक्रम पर उठायी और विनिश्चित की जा सकती है - निर्वाचन अधिकरण किसी भी प्रक्रम पर नियमों के अननुपालन के दोष से सम्बन्धित विवादक को ले सकता है और उसका विनिश्चय कर सकता है और प्राधिकारी केवल प्रारम्भ में ऐसा करने के लिए बाध्य नहीं है - नियम 8 की आवश्यकता का अधित्यजन नहीं हो सकता और प्राधिकारी का प्रारम्भ में याचिका खारिज करने में असफल रहना प्राधिकारी को पश्चात्तवर्ती प्रक्रम पर ऐसा करने से प्रतिषिद्ध या निवारित नहीं करेगा। (बैजूलाल वर्मा वि. एडीशनल कलेक्टर, छिंदवाड़ा) ...129

पंचायत (निर्वाचन अर्जियाँ, भ्रष्टाचार और सदस्यता के लिए निरर्हता) नियम, म.प्र. 1995, नियम 80 - देखें - पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993, धारा 122, (ज्ञानेन्द्र उर्फ छोटू वि. अनूप चंद्र) ...341

दण्ड संहिता (1860 का 45), धारा 84 - विकृत चित्त व्यक्ति का कार्य - अपीलार्थी की मानसिक दशा सम्बन्धी अभिवचन उसके नजदीकी पारिवारिक सदस्यों द्वारा किये गये अनन्यतः कथनों पर आधारित - अभिवचन प्रथम बार विशेष अनुमति याचिका के प्रक्रम पर सर्वोच्च न्यायालय के समक्ष किया गया - अपीलार्थी किसी लाभ का हकदार नहीं। (जगदीश वि. म.प्र. राज्य) SC---310

दण्ड संहिता (1860 का 45), धारा 109 - देखें - राष्ट्र गौरव अपमान निवारण अधिनियम, 1971, धाराएँ 2 व 3, (आमिर खान वि. म.प्र. राज्य) ...736

दण्ड संहिता (1860 का 45), धारा 188 - देखें - दण्ड प्रक्रिया संहिता, 1973, धारा 482, (गौतम कल्लो (जॉ.) वि. म.प्र. राज्य) ...536

दण्ड संहिता (1860 का 45), धारा 302 - देखें - साक्ष्य अधिनियम, 1872, धारा 3 (जगदीश वि. म.प्र. राज्य) SC---310

दण्ड संहिता (1860 का 45), धारा 302 या 306 - हत्या या आत्महत्या - अभियुक्त की पत्नी और पुत्री की मृत्यु जलने से आयी क्षतियों के कारण हुई - उनकी मृत्यु के समय अभियुक्त उनके साथ वहाँ मौजूद था - अभियुक्त ने पड़ोसियों को बुलाने के लिए शोरगुल नहीं किया और मृत व्यक्तियों को बचाने का कोई प्रयत्न नहीं किया - इसके विपरीत, वह उसके पुत्र द्वारा किये गये

deceased persons were set ablaze - He silently moved away taking the bicycle and reached to the house of daughter-in-law and had made extra-judicial confession to her - He did not lodge the report - Superficial burn injuries found on the person of accused establishes his complicity and presence - It was a case of commission of murder by accused. [Ramchandra Kahar v. State of M.P.] ...256

Penal Code (45 of 1860), Sections 302, 366, 364 & 376, Evidence Act, 1872, Section 3 - Rape and Murder - Circumstantial evidence - Last seen together - Salesman of liquor shop (P.W. 15) states that appellant along with girl had come to liquor shop and had purchased liquor - He had identified the dead body of the girl and appellant from a photograph published in newspaper - Newspapers not filed - Dock identification after 12 months of incident of no use in absence of T.I.P. - Witness not reliable. [State of M.P. v. Shankarlal] ...717.

Penal Code (45 of 1860), Section 304-B - Dowry Death - Essential ingredients - Law discussed. [Vijay Bahadur Singh v. State of M.P.] ...473

Penal Code (45 of 1860), Section 304-B - Dowry Death - Soon before death - Allegation of cruelty or harassment for demand of dowry is of the period of seven months prior to death - Instant case can hardly be term as soon before her death. [Vijay Bahadur Singh v. State of M.P.] ...473

Penal Code (45 of 1860), Section 304-B - Dowry Death - Suspicious circumstances - Parents of deceased were not informed soon about her death and dead body was hurriedly cremated with the result that no postmortem of the body could be conducted - It is held to be unnatural death. [Vijay Bahadur Singh v. State of M.P.] ...473.

Penal Code (45 of 1860), Sections 304 Part-II & 304-A - Culpable homicide not amounting to murder or causing death by negligence - Applicant was cleaning his licensee revolver and at-randomly trigger was pressed and one bullet hit his grand-daughter resulting in her death - Held - Death is caused by negligent act of applicant - Offence u/s 304 Part-II not made out - Case will fall within purview of S. 304-A. [Ram praksh Soni v. State of M.P.]...*8

Penal Code (45 of 1860), Sections 304 Part II & 330 - See - Criminal Procedure Code, 1973, Section 240 [Indu Jain v. State of M.P.] SC...1

Penal Code (45 of 1860), Sections 304-B & 498-A - Dowry death - Deceased died along with her 2 year old girl by burning within 7 years of marriage in abnormal circumstances - Appellant also did not inform the incident to the police or to his in-laws - Circumstances suggest that deceased was being harassed by persistent and consistent demand of dowry - Guilt of appellant proved beyond reasonable doubt. [Srikant v. State of M.P.] ...683

Penal Code (45 of 1860), Sections 304-B & 498-A, Evidence Act,

प्रश्न का उत्तर देने में असफल हो गया कि मृत व्यक्तियों को आग कैसे लगी, - वह चुपके से सायकिल लेकर चला गया और पुत्रवधु के घर पहुँचा और उससे न्यायेतर संस्वी.ति की - उसने रिपोर्ट दर्ज नहीं करायी - अभियुक्त के शरीर पर पायी गई जलने की बाह्य क्षतियाँ उसकी सह-अपराधिता और उपस्थिति साबित करती हैं - यह अभियुक्त द्वारा हत्या करने का मामला था। (रामचन्द्र कहार वि. म.प्र. राज्य) ...256

दण्ड संहिता (1860 का 45), धाराएँ 302, 366, 364 व 376, साक्ष्य अधिनियम, 1872, धारा 3 - बलात्संग और हत्या - परिस्थितिजन्य साक्ष्य - अंतिम बार साथ-साथ देखे गये - शराब दुकान के विक्रेता (अ.सा. 15) ने कथन किया कि अपीलार्थी लड़की के साथ शराब की दुकान पर आया था और शराब क्रय की थी - उसने समाचार पत्र में प्रकाशित फोटोग्राफ से लड़की के शव और अपीलार्थी की शिनाख्त की - समाचार पत्र पेश नहीं किये गये - शिनाख्त परेड के अभाव में घटना के 12 माह बाद कठघरे में शिनाख्त किसी उपयोग की नहीं - साक्षी विश्वसनीय नहीं। (म.प्र. राज्य वि. शंकरलाल) ...717

दण्ड संहिता (1860 का 45), धारा 304-बी - दहेज मृत्यु - आवश्यक तत्व - विधि की विवेचना की गयी। (विजय बहादुर सिंह वि. म.प्र. राज्य) ...473

दण्ड संहिता (1860 का 45), धारा 304-बी - दहेज मृत्यु - मृत्यु के तुरन्त पूर्व - दहेज की माँग के लिए क्रूरता और तंग करने का अभिकथन मृत्यु के सात माह पूर्व की कालावधि का है - प्रस्तुत मामला मृत्यु के तुरन्त पूर्व के रूप में नहीं माना जा सकता। (विजय बहादुर सिंह वि. म.प्र. राज्य) ...473

दण्ड संहिता (1860 का 45), धारा 304-बी - दहेज मृत्यु - संदेहजनक परिस्थितियाँ - मृतक के माता-पिता को उसकी मृत्यु के बारे में तुरन्त सूचित नहीं किया गया और इस परिणाम के साथ त्वरित रूप से शव का दाहसंस्कार कर दिया गया कि शरीर का कोई शव परीक्षण न किया जा सके - इसे अप्राकृतिक मृत्यु होना अभिनिर्धारित किया गया। (विजय बहादुर सिंह वि. म.प्र. राज्य) ...473

दण्ड संहिता (1860 का 45), धारा 304 भाग-II व धारा 304-ए - हत्या की कोटि में न आने वाला आपराधिक मानव वध अथवा उपेक्षा से मृत्यु कारित करना - आवेदक अपनी लायसेंसशुदा रिवॉल्वर साफ कर रहा था और अचानक ट्रिगर दब गया और एक गोली उसकी पोती को लगी जिसके परिणामस्वरूप उसकी मृत्यु हो गयी - अभिनिर्धारित - मृत्यु आवेदक के उपेक्षापूर्ण कार्य से कारित हुई है - धारा 304 भाग-II के अन्तर्गत अपराध नहीं बनता - मामला धारा 304-ए के अन्तर्गत आयेगा। (राम प्रकाश सोनी वि. म.प्र. राज्य) ---*8

दण्ड संहिता (1860 का 45), धाराएँ 304 भाग II व 330 - देखें - दण्ड प्रक्रिया संहिता, 1973, धारा 240 (इन्दू जैन वि. म.प्र. राज्य) SC---1

दण्ड संहिता (1860 का 45), धाराएँ 304-बी व 498-ए - दहेज मृत्यु - मृतक की उसकी 2 वर्ष की लड़की सहित विवाह के 7 वर्ष के भीतर असामान्य परिस्थितियों में जलने से मृत्यु हो गयी - अपीलार्थी ने भी घटना के बारे में पुलिस या अपने ससुराल पक्ष को जानकारी नहीं दी - परिस्थितियाँ सुझाव देती हैं कि मृतक को दहेज की सतत और निरन्तर माँग के लिए तंग किया जा रहा था - अपीलार्थी का दोष युक्तियुक्त शंका से परे साबित। (श्रीकांत वि. म.प्र. राज्य)...683

दण्ड संहिता (1860 का 45), धाराएँ 304-बी व 498-ए, साक्ष्य अधिनियम, 1872,

1872, Section 32 - *Dying declaration - Reliability - Principal of school recorded dying declaration of deceased - No certificate of doctor that deceased was fit to give statement - Statement not recorded in question answer form - Statement not read over to deceased - Statement of Principal of school is self contradictory on material facts - Principal of school appears to be interested witness - Evidence unreliable.* [Srikant v. State of M.P.] ...683

Penal Code (45 of 1860), Section 306 - *Abetment to commit suicide - Husband & wife committed suicide as appellant exploited their daughters sexually and did not permit them to leave his company - Appellant also intimidated them by giving threats to get them and their son beaten by gangsters - Deceased were also in embarrassed position as they had no courage to show their faces to the society - Held - Law does not require instigation to be in a particular form - Instigation may be by conduct - Act of abetment attributed to appellant is not to be viewed or tested in isolation - There was proximate and live link between the offending acts of appellant and suicides in question - Appellant guilty of offence u/s 306 IPC - Appeal dismissed.* [Manmohan v. State of M.P.] ...1006

Penal Code (45 of 1860), Section 306 - *Abetment to commit suicide - Law does not require instigation to be in a particular form or that it should only be in words - Instigation may be by conduct - Whether there was any instigation or not is a question to be decided on facts of each case - Instigation must be with reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated.* [Manmohan v. State of M.P.] ...1006

Penal Code (45 of 1860), Section 306 - *Sentence - Offence took place about 22 years back - Custodial sentence reduced to 7 years from 10 years.* [Manmohan v. State of M.P.] ...1006

Penal Code (45 of 1860), Section 306 - *15 years old prosecutrix all alone in her house - Accused suddenly entered there into and closed the door from inside - Accused squeezed mouth of prosecutrix and gave threats to defame her and came out of the house and run away when inhabitants of the locality came there and called the prosecutrix by name - Just after some time prosecutrix committed suicide by hanging from roof - Held - There was proximate and live link between offending act of accused and the extreme step taken by the prosecutrix - Accused was rightly held abettor of the suicide.* [Mohammad Hafeez v. State of M.P.] ...261

Penal Code (45 of 1860), Sections 306 & 498-A, Criminal Procedure Code, 1973, Section 174 - *Absence of allegations of demand of vehicle, cruelty or harassment to deceased in merg intimation echo the possibility of it being an afterthought.* [Shriram v. State of M.P.] ...665

Penal Code (45 of 1860), Sections 306 & 498-A - *Cruelty - Merely*

धारा 32 - मृत्युकालिक कथन - विश्वसनीयता - स्कूल के प्राचार्य ने मृतक का मृत्युकालिक कथन अभिलिखित किया - चिकित्सक का कोई प्रमाण पत्र नहीं कि मृतक कथन देने लायक थी - कथन प्रश्न उत्तर के रूप में नहीं लिखा गया - कथन मृतक को पढ़कर नहीं सुनाया गया - स्कूल के प्राचार्य का कथन तात्त्विक तथ्यों पर विरोधामासी - स्कूल का प्राचार्य हितबद्ध साक्षी प्रतीत होता है - साक्ष्य अविश्वसनीय। (श्रीकांत वि. म.प्र. राज्य) ...683

दण्ड संहिता (1860 का 45), धारा 306 - आत्महत्या करने का दुष्प्रेरण - पति और पत्नी ने आत्महत्या कर ली क्योंकि अपीलार्थी ने उनकी पुत्रियों का लैंगिक शोषण किया और उन्हें उसका साथ नहीं छोड़ने दिया - अपीलार्थी ने उन्हें और उनके पुत्र को गुण्डों से पिटवाने की धमकी देकर अभिन्नस्त भी किया - मृतक लज्जित स्थिति में भी थे क्योंकि उनमें समाज को मुँह दिखाने का साहस नहीं था - अभिनिर्धारित - विधि यह अपेक्षा नहीं करती कि उकसाहट विशिष्ट स्वरूप की हो - उकसाहट आचरण द्वारा हो सकती है - अपीलार्थी पर उपरोक्त उकसाने के कृत्य पर विचार या परीक्षण एकल रूप से नहीं हो सकता - अपीलार्थी के आपराधिक कृत्य और प्रश्नगत आत्महत्याओं के मध्य निकटवर्ती और सक्रिय सम्बन्ध था - अपीलार्थी भा.द.सं. की धारा 306 के अन्तर्गत अपराध का दोषी - अपील खारिज। (मनमोहन वि. म.प्र. राज्य) ...1006

दण्ड संहिता (1860 का 45), धारा 306 - आत्महत्या करने का दुष्प्रेरण - विधि यह अपेक्षा नहीं करती कि उकसाहट किसी विशिष्ट स्वरूप की हो या कि वह मात्र शब्दों में हो - उकसाहट आचरण द्वारा भी हो सकती है - क्या कोई उकसाहट थी या नहीं, ऐसा प्रश्न है जिसका विनिश्चय प्रत्येक मामले के तथ्यों के आधार पर किया जाना चाहिए - उकसाहट उस कृत्य के संदर्भ में होनी चाहिए जो उस व्यक्ति द्वारा, जिसे उकसाया जाता है, किया गया हो न कि उस कृत्य के संदर्भ में जो किया जाना संभाव्य था। (मनमोहन वि. म.प्र. राज्य) ...1006

दण्ड संहिता (1860 का 45), धारा 306 - दण्डादेश - अपराध लगभग 22 वर्ष पूर्व घटित हुआ - अभिरक्षा दण्डादेश 10 वर्ष से घटाकर 7 वर्ष किया गया। (मनमोहन वि. म.प्र. राज्य) ...1006

दण्ड संहिता (1860 का 45), धारा 306 - 15 वर्षीय अभियोक्त्री अपने घर में अकेली थी - अभियुक्त ने अचानक वहाँ प्रवेश किया और अन्दर से दरवाजा बंद कर दिया - अभियुक्त ने अभियोक्त्री का मुँह दबाया और उसे बदनाम करने की धमकी दी और जब आसपास के निवासी वहाँ आये और अभियोक्त्री को नाम से पुकारा तब घर से बाहर आया और भाग गया - उसके कुछ समय बाद ही अभियोक्त्री ने छत से लटककर आत्महत्या कर ली - अभिनिर्धारित - अभियुक्त के आपराधिक कृत्य और अभियोक्त्री द्वारा उठाये गये अंतिम कदम के मध्य निकटवर्ती और सीधा सम्बन्ध था - अभियुक्त को उचित रूप से आत्महत्या का दुष्प्रेरण ठहराया गया। (मोहम्मद हफीज वि. म.प्र. राज्य) ...261

दण्ड संहिता (1860 का 45), धाराएँ 306 व 498-ए, दण्ड प्रक्रिया संहिता, 1973, धारा 174 - मार्ग सूचना में वाहन की मॉग, क्रूरता या मृतक को तंग करने के अभिकथनों का अभाव उसके पश्चात्तवर्ती विचार होने की संभाव्यता की प्रतिध्वनि करता है। (श्रीराम वि. म.प्र. राज्य) ...665

दण्ड संहिता (1860 का 45), धाराएँ 306 व 498-ए - क्रूरता - केवल सम्बोधन कि

addressing "काली कलूटी" or "तेरे बाप ने कुछ नहीं दिया" can hardly be said to be such willful conduct so as to drive a woman to commit suicide or to cause grave injury to her life or limb. [Shriram v. State of M.P.] ...665

Penal Code (45 of 1860), Sections 306 & 498-A, Evidence Act, 1872, Section 113-A - *Presumption* - Although deceased committed suicide within 3 days after coming to her nuptial home but there is no evidence that appellants in any way aided, instigated or abetted commission of suicide or subjected her to cruelty or harassment for any unlawful demand - *Presumption u/s 113-A cannot be attracted.* [Shriram v. State of M.P.] ...665

Penal Code (45 of 1860), Sections 306 & 498-A - *Unlawful demand* - Vehicle given at the time of marriage developed defects within one month - Appellant No.1 brought back the vehicle and gave it to father-in-law for getting it repaired at a place from where it was purchased - Held - If vehicle had developed some problem within one month, there was nothing wrong if it was brought back for getting it repaired at a place from where it was purchased - This could not be termed as unlawful demand. [Shriram v. State of M.P.]...665

Penal Code (45 of 1860), Section 354 - *Attempt to outrage the modesty* - Prosecution to establish causation of assault or use of criminal force against a woman with intent to outrage her modesty. [Mazboot Singh v. State of M.P.] ...674

Penal Code (45 of 1860), Sections 354 & 376 - *Rape or attempt to outrage modesty* - Medical evidence - When medical evidence is conspicuously silent about occurrence of injuries either on the person or on private part of prosecutrix, irresistible conclusion of there being no forcible intercourse could easily be drawn. [Mazboot Singh v. State of M.P.] ...674

Penal Code (45 of 1860), Section 376, Criminal Procedure Code, 1973, Section 154 - *Delay in lodging FIR* - Explanation - Record shows that prosecutrix was constantly in fear of the appellant - Therefore, she could not disclose the incident to any body - Prosecution has explained the delay in making the FIR - Delay does not adversely affect the prosecution case. [Fulloo @ Phool Singh v. State of M.P.] ...*4

Penal Code (45 of 1860), Section 376, Evidence Act, 1872, Section 3 - *Rape* - *Appreciation of evidence* - Absence of exonerating circumstances to show that statement of prosecutrix is not trustworthy - Due weightage and credence should be given to the same and relied upon - Minor discrepancies in the statements of prosecutrix and her minor son are not fatal - Appeal dismissed. [Randhir Singh v. State of M.P.] ...485

Penal Code (45 of 1860), Section 376 - *Rape* - *Age of Prosecutrix* - Prosecutrix is residing in a small village - In that village, neither Kotwar Book is kept nor there is any school - Father and uncle of the prosecutrix

"काली कलूटी" या "तेरे बाप ने कुछ नहीं दिया" मुश्किल से ऐसा स्वेच्छापूर्ण आचरण कहा जा सकता है जिससे किसी महिला को आत्महत्या करने के लिए या उसके जीवन या शरीर को गंभीर क्षति कारित करने के लिए प्रेरित किया जाए। (श्रीराम वि. म.प्र. राज्य) ...665

दण्ड संहिता (1860 का 45), धाराएँ 306 व 498-ए, साक्ष्य अधिनियम, 1872, धारा 113-ए - उपधारणा - यद्यपि मृतक ने अपने ससुराल आने के 3 दिन बाद आत्महत्या कर ली किन्तु कोई साक्ष्य नहीं कि अपीलार्थियों ने किसी ढंग से आत्महत्या करने में सहायता दी, उकसाया या दुष्टेयित किया या किसी विधिविरुद्ध माँग के लिए उसके साथ क्रूरता की या तंग किया - धारा 113-ए के अन्तर्गत उपधारणा आकृष्ट नहीं हो सकती। (श्रीराम वि. म.प्र. राज्य) ...665

दण्ड संहिता (1860 का 45), धाराएँ 306 व 498-ए - विधिविरुद्ध माँग - विवाह के समय दिये गये वाहन में एक माह के भीतर खराबी आ गयी - अपीलार्थी क्र. 1-वाहन वापस ले आया और उसे उस स्थान से, जहाँ से उसे क्रय किया था, मरम्मत करवाने के लिए श्वशुर को दिया - अभिनिर्धारित - यदि वाहन में एक माह के भीतर कुछ समस्या आ गयी थी तो कुछ गलत नहीं था यदि उसे उस स्थान से, जहाँ से उसे क्रय किया था, मरम्मत करवाने के लिए वापस लाया गया - इसे विधिविरुद्ध माँग नहीं कहा जा सकता। (श्रीराम वि. म.प्र. राज्य) ...665

दण्ड संहिता (1860 का 45), धारा 354 - लज्जामंग करने का प्रयत्न - अभियोजन को हमले का कारण या किसी स्त्री के विरुद्ध उसकी लज्जामंग करने के आशय से आपराधिक बल का प्रयोग साबित करना होगा। (मजबूत सिंह वि. म.प्र. राज्य) ...674

दण्ड संहिता (1860 का 45), धाराएँ 354 व 376 - बलात्संग या लज्जामंग करने का प्रयत्न - चिकित्सीय साक्ष्य - जब चिकित्सीय साक्ष्य या तो अभियोक्त्री के शरीर पर या गुप्तांग पर क्षतियों की उपस्थिति के बारे में सुस्पष्ट रूप से मौन हो, बलपूर्वक मैथुन न होने का अप्रतिरोध्य निष्कर्ष आसानी से निकाला जा सकता। (मजबूत सिंह वि. म.प्र. राज्य) ...674

दण्ड संहिता (1860 का 45), धारा 376, दण्ड प्रक्रिया संहिता, 1973, धारा 154 - एफ.आई.आर. दर्ज कराने में विलम्ब - स्पष्टीकरण - अभिलेख दर्शाता है कि अभियोक्त्री सतत रूप से अपीलार्थी के भय में थी - इसलिए, वह किसी को घटना प्रकट नहीं कर सकी - अभियोजन ने एफ.आई.आर. दर्ज कराने में हुआ विलम्ब स्पष्ट किया है - विलम्ब अभियोजन के मामले को प्रतिकूल रूप से प्रभावित नहीं करता है। (फुल्लू उर्फ फूलसिंह वि. म.प्र. राज्य) ---*4

दण्ड संहिता (1860 का 45), धारा 376, साक्ष्य अधिनियम, 1872, धारा 3 - बलात्संग - साक्ष्य का अधिमूल्यन - यह दर्शाने के लिए दोषमुक्त करने वाली परिस्थितियों का अभाव कि अभियोक्त्री का कथन विश्वसनीय नहीं है - इसे सम्यक वरीयता और महत्व दिया जाना चाहिए और उस पर विश्वास करना चाहिए - अभियोक्त्री और उसके अवयस्क पुत्र के कथनों में मामूली अन्तर घातक नहीं है - अपील खारिज। (रणधीर सिंह वि. म.प्र. राज्य) ...485

दण्ड संहिता (1860 का 45), धारा 376 - बलात्संग - अभियोक्त्री की उम्र - अभियोक्त्री एक छोटे गाँव में निवासरत - उस गाँव में न तो कोटवार पुस्तिका रखी जाती है और न ही वहाँ कोई विद्यालय है - अभियोक्त्री के पिता और चाचा ने कथन किया कि उसकी उम्र 14 से 15 वर्ष है - रेडियोलॉजिस्ट ने भी यह राय दी कि उसकी उम्र 15 वर्ष से कम थी - अभियोजन

*states that she is 14 to 15 years of age - Raiologist also opined that her age was below 15 years - Prosecution succeeded in proving that prosecutrix was below 16 years of age. [Fulloo @ Phool Singh v. State of M.P.] ...*4*

*Penal Code (45 of 1860), Section 376 - Rape - Old age - Nothing on record to suggest that appellant's penis was attenuated and not capable of penetration - Evidence of doctor is that appellant was capable of committing sexual intercourse - Argument that appellant being sixty years old person could not have such erection of penis, is bereft of any substance - Appeal dismissed. [Dagdu Lal v. State of M.P.] ...*6*

*Penal Code (45 of 1860), Section 376 - Rape - Slight penetration - Even a slight penetration is sufficient to constitute an offence of rape. [Dagdu Lal v. State of M.P.] ...*6*

Penal Code (45 of 1860), Sections 420, 467, 468 & 471 - Obtaining arms license by suppressing pendency of criminal case - Applicant disclosed pendency of six criminal cases in his application for grant of arm licence - Such declaration was found to be true by S.P. and Arm license was granted - Subsequently, it was found that one more case was pending which was not disclosed in the application - Held - Cheating or fraud could not be brought into the matter in absence of mens rea or criminal intention of securing arms licence by concealment of remaining solitary criminal case - No prosecution could be launched except for dealing the matter under the provisions of Arms Act only. [Ummed Singh v. State of M.P.] ...530

Penal Code (45 of 1860), Section 498-A, Evidence Act, 1872, Section 32(1) - Cruelty - Oral evidence - Admissibility - No direct evidence about torture and harassment to deceased wife - Death of wife was accidental - Oral evidence of witnesses about what the deceased told them against the accused about the torture & harassment - Oral evidence of witnesses has no connection with any circumstance of transaction which resulted in death of deceased - Such evidence cannot be looked into for any purpose except S. 32 of Evidence Act - Conviction u/s 498-A of IPC cannot be upheld. [Bhairon Singh v. State of M.P.] SC...301

Police Regulations, M.P., Regulation 70-A - See - Service Law [Atma Ram Sharma v. State of M.P.] ...25

Police Regulations, M.P., Regulation 270 - See - Service Law [Rajendra Kumar Chaturvedi v. State of M.P.] ...374

Policy Matters - Judicial review - Law discussed. [Chingalal Yadav v. State of M.P.] FB...788

Practice & Procedure - New plea - At the stage of Writ Appeal - Permissibility - Prosecution of juvenile by Court of regular Magistrate even with other accused was without jurisdiction in view of S. 24 of Juvenile Justice

यह साबित करने में सफल हुआ कि अभियोक्त्री की उम्र 16 वर्ष से कम थी। (फुल्लू उर्फ फूलसिंह वि. म.प्र. राज्य) ---*4

दण्ड संहिता (1860 का 45), धारा 376 - बलात्संग - वृद्धावस्था - अभिलेख पर यह सुझाव देने के लिए कुछ नहीं कि अपीलार्थी का लिंग क्षीण हो गया था और प्रवेशन में समर्थ नहीं था - चिकित्सक की साक्ष्य है कि अपीलार्थी मैथुन करने में समर्थ था - तर्क कि अपीलार्थी साठ वर्षीय वृद्ध व्यक्ति होने से लिंग का ऐसा स्थापन नहीं कर सका था, सार विहीन है - अपील खारिज। (दगडू लाल वि. म.प्र. राज्य) ---*6

दण्ड संहिता (1860 का 45), धारा 376 - बलात्संग - अल्प प्रवेशन - बलात्संग का अपराध गठित करने के लिए अल्प प्रवेशन भी पर्याप्त है। (दगडू लाल वि. म.प्र. राज्य) ---*6

दण्ड संहिता (1860 का 45), धाराएँ 420, 467, 468 व 471 - दाण्डिक मामले के लम्बन को छिपाकर आयुध लायसेंस अभिप्राप्त करना - आवेदक ने आयुध लायसेंस प्रदान किये जाने के लिए अपने आवेदन में छः दाण्डिक मामलों के लम्बन को प्रकट किया - पुलिस अधीक्षक द्वारा ऐसी घोषणा सत्य होना पायी और आयुध लायसेंस प्रदान किया गया - तत्पश्चात् यह पाया गया कि एक और मामला लम्बित था जो आवेदन में प्रकट नहीं किया गया - अभिनिर्धारित - शेष एकमात्र दाण्डिक मामले के छिपाव द्वारा आयुध लायसेंस प्राप्त करने की आपराधिक मनःस्थिति या आपराधिक आशय के अभाव में छल या कपट मामले में नहीं लाया जा सका - केवल आयुध अधिनियम के उपबंधों के अन्तर्गत मामले में कार्यवाही करने के सिवाय कोई अभियोजन प्रारम्भ नहीं किया जा सकता। (उम्मेद सिंह वि. म.प्र. राज्य) ...530

दण्ड संहिता (1860 का 45), धारा 498-ए, साक्ष्य अधिनियम, 1872, धारा 32(1) - क्रूरता - मौखिक साक्ष्य - अनुज्ञेयता - मृत पत्नी को यंत्रणा देने और तंग करने के बारे में कोई प्रत्यक्ष साक्ष्य नहीं - पत्नी की मृत्यु दुर्घटनावश हुई थी - साक्षियों की मौखिक साक्ष्य कि उन्हें मृतक ने यंत्रणा देने और तंग करने के बारे में अभियुक्त के विरुद्ध बताया था - साक्षियों की मौखिक साक्ष्य ऐसी परिस्थिति के संव्यवहार से कोई सम्बन्ध नहीं रखती जिसके परिणामस्वरूप मृतक की मृत्यु हुई - साक्ष्य अधिनियम की धारा 32 के सिवाय किसी प्रयोजन के लिए ऐसी साक्ष्य की जाँच पड़ताल नहीं की जा सकती है - मा.द.सं. की धारा 498-ए के अन्तर्गत दोषसिद्धि की पुष्टि नहीं की जा सकती। (मैरों सिंह वि. म.प्र. राज्य) SC---301

पुलिस विनियम, म.प्र., विनियम 70-ए - देखें - सेवा विधि (आत्मा राम शर्मा वि. म.प्र. राज्य) ...25

पुलिस विनियम, म.प्र., विनियम 270 - देखें - सेवा विधि (राजेन्द्र कुमार चतुर्वेदी वि. म.प्र. राज्य) ...374

पॉलिसी सम्बन्धी विषय - न्यायिक पुनर्विलोकन - विधि की विवेचना की गयी। (छिंगालाल यादव वि. म.प्र.राज्य) FB...788

पद्धति और प्रक्रिया - नया अभिवचन - रिट अपील के प्रक्रम पर - अनुज्ञेयता - किशोर न्याय अधिनियम, 1986 की धारा 24 को दृष्टिगत रखते हुए नियमित मजिस्ट्रेट के न्यायालय द्वारा किशोर का अभियोजन अन्य अभियुक्त के साथ भी अधिकारिता विहीन था - ऐसा नया

Act, 1986 - Such new plea involving no factual dispute may be raised even at the stage of Writ Appeal. [Ashok Sharma v. Union of India] ...326

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Motive - Appellant alleged to have demanded money for issuing Labour Payment Certificate - Prosecution failed to prove motive as at relevant time LPC was not required as wages of employees was being made through bank - Appeal allowed - Appellant acquitted. [Sanjay Kumar v. State of M.P.] ...490

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) r/w 13(2) - Phenolphthalein test - First Phenolphthalein test in respect of solution of the pocket was found negative - Shirt was again sent for test and presence of phenolphthalein was found - Held - This throws considerable doubt about the presence of phenolphthalein in the pocket of the accused. [Sanjay Kumar v. State of M.P.] ...490

Prevention of Food Adulteration Act (37 of 1954), Sections 10(4) & 10(4-A) - Powers of the Food Inspector - Held - As per Ss. 10(4) & 10(4-A) of the Act, if any article seized is found adulterated and Local Authorities have satisfied that it is unfit for human consumption, the Authorities could destroy the adulterated food article. [Hind Dairy and Food Products, Maharajpura, Gwalior v. State of MP] ...583

Prevention of Food Adulteration Act (37 of 1954), Section 24, Prevention of Food Adulteration Rules, M.P. 1962, Rule 4 - Powers & duties of State Authority - Held - State Authority i.e. Food (Health) Authority and Controller, Food & Drugs Administration, Bhopal has power to suspend the production & manufacture of articles of food if on inspection after a report of Public Analyst, it has been found that the aforesaid article of food is adulterated or misbranded. [Hind Dairy and Food Products, Maharajpura, Gwalior v. State of MP] ...583

Prevention of Food Adulteration Rules, M.P. 1962, Rule 4 - See - Prevention of Food Adulteration Act, 1954, Section 24, [Hind Dairy and Food Products, Maharajpura, Gwalior v. State of MP] ...583

Prevention of Insults to National Honour Act (69 of 1971), Section 2 - Penalty - Film 'LOC Kargil' exhibited the coffins of the soldiers covered by National Flag - It was alleged that National Flags were wrongly used for covering the coffins - Held - It is nowhere stated that how the flag has to be used - Offence under the Act can only be constituted if any person within public view burns, mutilates, defaces, disfigures, destroys, tramples upon or otherwise brings into contempt. [J.P. Dutta v. R.V. Antarolia] ...729

Prevention of Insults to National Honour Act (69 of 1971), Sections 2 & 3, Flag Code of India, 2002, Sections 2(B)(5), 3, 5, 6 & 11, Penal Code, 1860, Section 109 - National Flag was hosting even after sunset -

अभिवचन जिसमें कोई तथ्यात्मक विवाद अन्तर्गुप्त नहीं है, रिट अपील के प्रक्रम पर भी उठाया जा सकता है। (अशोक शर्मा वि. यूनिन ऑफ इंडिया) ...326

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) - हेतु - अपीलार्थी ने कथित रूप से लेबर पेमेंट सर्टिफिकेट जारी करने के लिए रुपयों की माँग की - अभियोजन हेतु साबित करने में असफल रहा क्योंकि सुसंगत समय पर एल.पी.सी. आवश्यक नहीं थी क्योंकि कर्मचारियों का वेतन बैंक के माध्यम से दिया जा रहा था - अपील मंजूर - अपीलार्थी दोषमुक्त। (संजय कुमार वि. म.प्र. राज्य) ...490

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) सहपठित 13(2) - फिर्नाल्थेलिन परीक्षण - जब के विलयन के सम्बन्ध में प्रथम फिर्नाल्थेलिन परीक्षण नकारात्मक पाया गया - कमीज पुनः परीक्षण के लिए भेजी गयी और फिर्नाल्थेलिन की उपस्थिति पायी गयी - अभिनिर्धारित - यह अभियुक्त की जेब में फिर्नाल्थेलिन की उपस्थिति के बारे में पर्याप्त शंका डालता है। (संजय कुमार वि. म.प्र. राज्य) ...490

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 10(4) व 10(4-ए) - खाद्य निरीक्षक की शक्तियाँ - अभिनिर्धारित - अधिनियम की धारा 10(4) व 10(4-ए) के अनुसार यदि कोई अभिगृहीत पदार्थ अपमिश्रित पाया जाता है और स्थानीय प्राधिकारियों का यह समाधान हो गया हो कि यह मानवीय उपभोग के लिए अनुपयुक्त है तो प्राधिकारी अपमिश्रित खाद्य पदार्थ को विनष्ट कर सकता है। (हिन्द डेयरी एण्ड फुड प्रोडक्ट्स, महाराजपुरा, ग्वालियर वि. म.प्र. राज्य) ...583

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 24, खाद्य अपमिश्रण निवारण नियम, 1962, नियम 4 - राज्य प्राधिकारी की शक्तियाँ और कर्तव्य - अभिनिर्धारित - राज्य प्राधिकारी अर्थात् खाद्य (स्वास्थ्य) प्राधिकारी और नियंत्रक, खाद्य एवं औषधि प्रशासन, भोपाल को खाद्य पदार्थों के उत्पादन और विनिर्माण को निरन्तरित करने की शक्ति है यदि लोक विश्लेषक की रिपोर्ट के बाद निरीक्षण पर यह पाया गया हो कि उपर्युक्त खाद्य पदार्थ अपमिश्रित या मिथ्या छाप वाला है। (हिन्द डेयरी एण्ड फुड प्रोडक्ट्स, महाराजपुरा, ग्वालियर वि. म.प्र. राज्य) ...583

खाद्य अपमिश्रण निवारण नियम, 1962, नियम 4 - देखें - खाद्य अपमिश्रण निवारण अधिनियम, 1954, धारा 24, (हिन्द डेयरी एण्ड फुड प्रोडक्ट्स, महाराजपुरा, ग्वालियर वि. म.प्र. राज्य) ...583

राष्ट्र गौरव अपमान निवारण अधिनियम (1971 का 69), धारा 2 - शास्ति - फिल्म 'एलओसी कारगिल' में राष्ट्रध्वज से ढके हुए सैनिकों के ताबूतों को प्रदर्शित किया गया - यह कथित किया गया कि ताबूतों को ढकने के लिए राष्ट्रध्वजों का गलत ढंग से उपयोग किया गया - अभिनिर्धारित - यह कहीं भी कथित नहीं किया गया कि ध्वज का प्रयोग कैसे किया जाना है - अधिनियम के अन्तर्गत अपराध केवल तब गठित हो सकता है यदि कोई व्यक्ति लोक दृष्टिगोचरता में जलाता है, काट-छाँट करता है, विरूपित करता है, विदूषित करता है, नष्ट करता है, कुचलता है या अन्यथा अवमान करता है। (जे.पी. दत्ता वि. रवि अंतरोलिया) ...729

राष्ट्र गौरव अपमान निवारण अधिनियम (1971 का 69), धाराएँ 2 व 3, भारतीय ध्वज संहिता, 2002, धाराएँ 2(बी)(5), 3, 5, 6 व 11, दण्ड संहिता, 1860, धारा 109 - सूर्यास्त के बाद भी राष्ट्रध्वज फहराया जा रहा था - फिल्म अभिनेता आमिर खान समारोह के

Film Actor Aamir Khan was chief guest of function in which complainant was also present - Nothing in complaint or in evidence has been stated against Aamir Khan except that he was present in the said function - Prima facie no evidence to prove that he has caused insult to National Flag - Application allowed. [Aamir Khan v. State of M.P.] ...736

Protection of Women from Domestic Violence Act (43 of 2005), Section 2(q) - The word used in S. 2(q) of the Act is that 'respondent' means any adult male person and not any adult person.- Therefore, complaint against relatives of husband cannot include female members - Female members cannot be made respondents in proceeding under the Act. [Tehmina Qureshi v. Shazia Qureshi] ...296

Protection of Women from Domestic Violence Act (43 of 2005), Sections 18 & 31, Protection of Women from Domestic Violence Rules, 2006, Rule 6 - Economic Violence - As per Rule 6, application of the aggrieved person u/s 12 of the Act is required to be filed in Form No.II - Sub-clause (iii) of Clause 4 of Form No.I deals with economic violence, according to which not providing money for maintenance or food, clothes, medicines etc. is amounting to economic violence for which the Court is empowered to pass a protection order - Therefore, interim order of maintenance u/s 18 is a protection order and on account of breach of protection order, the proceedings can be initiated against the respondent u/s 31 of the Act. [Sunil @ Sonu v. Smt. Sarita Chawla] ...*5

Protection of Women from Domestic Violence Act (43 of 2005), Sections 28 & 12 - Proceedings are governed by the provisions of Cr.P.C.- However, the Court is not prevented from laying down its own procedure for disposal of an application u/s 12 of the Act. [Sunil @ Sonu v. Smt. Sarita Chawla] ...*5

Protection of Women from Domestic Violence Rules, 2006, Rule 6 - See - Protection of Women from Domestic Violence Act, 2005, Sections 18 & 31 [Sunil @ Sonu v. Smt. Sarita Chawla] ...*5

Public Funded Project) Rules, 1997, Rule 11 - See - National Highways Act, 1956, Section 9, National Highways (Fees for the use of National Highway Section and Permanent Bridge [Truck Owners Association v. State of M.P.] ...364

Public Premises (Eviction of Unauthorised Occupants) Act (40 of 1971), Section 7 - Payable - Meaning - Held - The word "payable" in S. 7 of the Act in the context in which it occurs means legally recoverable. [Lakhanlal Rawat v. Union of India] ...699

Public Premises (Eviction of Unauthorised Occupants) Act (40 of 1971), Section 7 - Power to require payment of rent or damages in respect

मुख्य अतिथि थे जिसमें परिवादी भी मौजूद था - परिवाद या साक्ष्य में आमिर खान के विरुद्ध कुछ भी कथित नहीं किया गया सिवाय इसके कि वह उक्त समारोह में मौजूद थे - यह साबित करने के लिए प्रथम दृष्टया कोई साक्ष्य नहीं कि उन्होंने राष्ट्रध्वज का अपमान कारित किया है - आवेदन मंजूर। (आमिर खान वि. म.प्र. राज्य) ...736

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 2(क्यू) - अधिनियम की धारा 2(क्यू) में प्रयुक्त शब्द 'प्रत्यर्थी' का अर्थ है कोई वयस्क पुरुष व्यक्ति न कि कोई वयस्क व्यक्ति - इसलिए पति के नातेदारों के विरुद्ध परिवाद में महिला सदस्यों को सम्मिलित नहीं किया जा सकता - महिला सदस्यों को अधिनियम के अन्तर्गत कार्यवाही में प्रत्यर्थी नहीं बनाया जा सकता। (तहमीना कुरैशी वि. सजिया कुरैशी) ...296

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धाराएँ 18 व 31, घरेलू हिंसा से महिलाओं का संरक्षण नियम, 2006, नियम 6 - आर्थिक हिंसा - नियम 6 के अनुसार व्यथित व्यक्ति का अधिनियम की धारा 12 के अन्तर्गत आवेदन प्ररूप क्र. II में पेश किया जाना अपेक्षित है - प्ररूप क्र. I के खण्ड 4 का उपखण्ड (iii) आर्थिक हिंसा से सम्बद्ध है जिसके अनुसार भरण-पोषण के लिए धन या भोजन, कपड़े, दवाईयों आदि का प्रबंध न करना आर्थिक हिंसा की कोटि में आता है जिसके लिए न्यायालय संरक्षण आदेश पारित करने के लिए सशक्त है - इसलिए, धारा 18 के अन्तर्गत भरण-पोषण का अंतरिम आदेश एक संरक्षण आदेश है और संरक्षण आदेश के भंग के कारण प्रत्यर्थी के विरुद्ध अधिनियम की धारा 31 के अन्तर्गत कार्यवाहियाँ प्रारम्भ की जा सकती हैं। (सुनील उर्फ सोनू वि. श्रीमति सरिता चॉवला) ---*5

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धाराएँ 28 व 12 - कार्यवाहियाँ द.प्र.सं. के उपबंधों से शासित होती हैं - तथापि, न्यायालय अधिनियम की धारा 12 के अन्तर्गत आवेदन के निस्तारण के लिए अपनी स्वयं की प्रक्रिया निर्धारित करने से निवारित नहीं है। (सुनील उर्फ सोनू वि. श्रीमति सरिता चॉवला) ---*5

घरेलू हिंसा से महिलाओं का संरक्षण नियम, 2006, नियम 6 - देखें - घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005, धाराएँ 18 व 31 (सुनील उर्फ सोनू वि. श्रीमति सरिता चॉवला) ---*5

लोक निधि परियोजना) नियम, 1997, नियम 11 - देखें - राष्ट्रीय राजमार्ग अधिनियम, 1956, धारा 9, राष्ट्रीय राजमार्ग (राष्ट्रीय राजमार्ग खण्ड और स्थायी पुल के उपयोग के लिए फीस (ट्रक ऑनर्स एसोसिएशन वि. म.प्र. राज्य) ...364

सरकारी स्थान (अप्राधिकृत अधिमोगियों की बेदखली) अधिनियम (1971 का 40), धारा 7 - देय - अर्थ - अभिनिर्धारित - अधिनियम की धारा 7 में शब्द "देय" जिस संदर्भ में पाया जाता है, का अर्थ वैध रूप से वसूली योग्य है। (लखनलाल रावत वि. यूनिन ऑफ इंडिया) ...699

सरकारी स्थान (अप्राधिकृत अधिमोगियों की बेदखली) अधिनियम (1971 का 40), धारा 7 - सरकारी स्थान के सम्बन्ध में किराया या नुकसानी के भुगतान की अपेक्षा करने की शक्ति

- of public premises - Time barred claim - Permissibility - Section 7 of the Act only provides of special procedure for realization of rent in arrears and does not constitute a source or foundation of a right to claim debt otherwise time barred - When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. [Lakhanlal Rawat v. Union of India]* ...699
- Public Services (Promotion) Rules, M.P. 2002, Rule 7(4) - See - Service Law [Ashok Kumar Shukla v. State of M.P.]** ...870
- Qanoon Registry, Riyasat Gwalior Samvat 1971, Section 9 - See - Transfer of Property Act Gwalior State Samvat 2001, Section 119 [Savitribai v. Krishna Morari (Dead) Through L.R.]** ...956
- Rajya Suraksha Adhiniyam, M.P., 1990 (4 of 1991), Section 8 - Externment - Natural Justice - While passing an order under the provisions of Adhiniyam, the District Magistrate must have to provide all the material documents including the statements of witnesses examined in the matter to the person concerned. [Ravindra Singh Sikarwar v. State of M.P.]** ...86
- Registration Act (16 of 1908), Section 17 - See - Transfer of Property Act, 1882, Section 107, [Balvant Rai Agrawal v. Bharat Petroleum Corporation]**...646
- Registration Act (16 of 1908), Sections 17 & 49 - Unregistered & unexecuted sale deed - When document has not been executed by all the sellers - Document could not be presented for registration - Ss. 17 & 49 not applicable. [Narbada Prasad v. Manik Darbar]** ...595
- Representation of the People Act (43 of 1951), Sections 83 & 86, Civil Procedure Code, 1908, Order 7 Rule 11(a) - Rejection of election petition for want of cause of action - Election petition not disclosing the source of information of corrupt practices and such allegations were not verified - Effect - Held - Accordingly, in the case on hand, where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and affidavit in the form prescribed does not suffer from any defect, the allegations of corrupt practices cannot be inquired and tried at all. [Shushil Kumar Khatri v. Sartaj Singh]** ...204
- Representation of the People Act (43 of 1951), Section 86, Civil Procedure Code, 1908, Order 7 Rule 11 - Election Petition - Non-disclosure of cause of action - Election challenged on the ground of correctness and authenticity of counting carried out by means of EVMs - Petitioner is under obligation to demonstrate as to how EVMs could be tempered with to get desired result - No expert opinion placed on record regarding chances of misalignment of EVMs - Even if the averments made in Election Petition are taken at their face value and are accepted in entirety, no triable issue between the parties would arise in absence of complete, precise and specific pleading**

— समय वर्जित दावा — अनुज्ञेयता — अधिनियम की धारा 7 बकाया किराये की वसूली के लिए केवल विशेष प्रक्रिया का उपबंध करती है और अन्यथा समय वर्जित ऋण का दावा करने के किसी अधिकार का स्रोत या आधार गठित नहीं करती — जब किसी प्राधिकारी पर किराये का बकाया अवधारित करने का कर्तव्य डाला जाता है, तब अवधारण विधि अनुसार होना चाहिए। (लखनलाल रावत वि. यूनिन ऑफ इंडिया) ...699

लोक सेवा (पदोन्नति) नियम, म.प्र. 2002, नियम 7(4) — देखें — सेवा विधि (अशोक कुमार शुक्ला वि. म.प्र. राज्य) ...870

कानून रजिस्ट्री, रियासत ग्वालियर संवत् 1971, धारा 9 — देखें — सम्पत्ति अंतरण अधिनियम ग्वालियर स्टेट संवत् 2001, धारा 119 (सावित्री बाई वि. कृष्ण मोरारी (मृतक) द्वारा विधिक प्रतिनिधि) ...956

राज्य सुरक्षा अधिनियम, म.प्र., 1990 (1991 का 4), धारा 8 — निष्कासन — नैसर्गिक न्याय — अधिनियम के उपबंधों के अन्तर्गत कोई आदेश पारित करते समय जिला मजिस्ट्रेट को साक्षियों, जिनकी सम्बन्धित व्यक्ति के मामले में परीक्षा की गयी है, के कथनों को सम्मिलित करते हुए सभी तात्विक दस्तावेज मुहैया करना चाहिए। (रविन्द्र सिंह सिकरवार वि. म.प्र. राज्य) ...86

रजिस्ट्रीकरण अधिनियम, (1908 का 16), धारा 17 — देखें — सम्पत्ति अन्तरण अधिनियम, 1882, धारा 107, (बलवंत राय अग्रवाल वि. भारत पेट्रोलियम कारपोरेशन) ...646

रजिस्ट्रीकरण अधिनियम (1908 का 16), धाराएँ 17 व 49 — अरजिस्ट्रीकृत व अनिष्पादित विक्रय विलेख — जब दस्तावेज सभी विक्रेताओं द्वारा निष्पादित न किया गया हो — दस्तावेज रजिस्ट्रीकरण के लिए प्रस्तुत नहीं किया जा सकता — धाराएँ 17 व 49 लागू होने योग्य नहीं। (नर्बदा प्रसाद वि. मानिक दरबार) ...595

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 83 व 86, सिविल प्रक्रिया संहिता, 1908, आदेश 7 नियम 11(ए) — वाद कारण के अभाव में निर्वाचन याचिका की नामजुरी — निर्वाचन याचिका से भ्रष्टाचार की जानकारी के स्रोत का प्रकटन नहीं और ऐसे अभिकथनों का सत्यापन नहीं किया गया — प्रभाव — अभिनिर्धारित — तदनुसार, प्रस्तुत मामले में, जहाँ न तो याचिका में सत्यापन और न ही शपथपत्र याचिका में कथित तथ्यों के बारे में, जो याची के ज्ञान के नहीं हैं, याची की जानकारी के स्रोत का कोई संकेत देता है और याची आग्रह करता है कि सत्यापन सही है और विहित प्रारूप में शपथपत्र किसी त्रुटि से ग्रस्त नहीं है, भ्रष्टाचार के अभिकथनों की जाँच और विचारण नहीं किया जा सकता। (सुशील कुमार खत्री वि. सरताज सिंह) ...204

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 86, सिविल प्रक्रिया संहिता, 1908, आदेश 7 नियम 11 — निर्वाचन याचिका — वादकारण का अप्रकटीकरण — ईवीएम द्वारा की गई गणना की शुद्धता और प्रमाणिकता के आधार पर निर्वाचन को चुनौती — याची यह प्रदर्शित करने के लिए बाध्य है कि इच्छित परिणाम प्राप्त करने के लिए ईवीएम में कैसे हेरफेर किया गया — ईवीएम के मिसएलाइनमेंट की आशंका के सम्बन्ध में अभिलेख पर कोई विशेषज्ञ राय नहीं रखी गयी — यद्यपि निर्वाचन याचिका में किये गये प्रकथन वैसे ही सम्पूर्णता के साथ स्वीकार कर लिये जाएँ तो भी ईवीएम द्वारा की गई मतों की गिनती में कथित अनियमितताओं के सम्बन्ध में पूर्ण, यथावत् और विनिर्दिष्ट अभिवचन के अभाव में पक्षकारों के मध्य कोई विचारण योग्य विवादक उत्पन्न नहीं होता — याचिका नामजूर। (मुकेश नायक वि. ब्रजेन्द्र प्रताप सिंह) ...420

in respect of alleged irregularities in counting of votes through EVMs - Petition rejected. [Mukesh Nayak v. Brijendra Pratap Singh] ...420

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(x) - Calling by caste - Appellant said "Chamarawala garra raha hai" - Held - Calling a person by caste with intent to insult or humiliate in a place within public view is an offence u/s 3(1)(x) of Act - Appeal dismissed. [Himmat Singh v. State of M.P.] ...503

Service Law - Character and Antecedents Verification Roll - Non-disclosure of fact that appellant was prosecuted under offences of Indian Penal Code - Appellant was juvenile on the date of the commission of the offence - Held - His prosecution by regular Magistrate during his juvenile status was without jurisdiction and by such disclosure, he could not have earned any disqualification - Appellant cannot be said to have suppressed any substantial information. [Ashok Sharma v. Union of India] ...326

Service Law - Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rule 14(5) - Departmental Enquiry - Enquiry Officer - Presenting Officer - Enquiry Officer acting as a presenting officer - Held - Enquiry Officer acted as a prosecutor and a judge and thus the entire enquiry stand vitiated. [Balveer Singh v. State of M.P.] ...191

Service Law - Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rule 14(5), Police Regulations, M.P. - Departmental Enquiry - Enquiry Officer - Presenting Officer - Enquiry Officer acting as a presenting officer - The respondent's stand was there is no provision in the Police Regulation to appoint presenting officer - Held - The Rules of 1966 are very much applicable in the case of police personnels and, therefore, once there is provision of appointment of a prosecuting officer, under the Rules of 1966, the same has to be adhere to. [Balveer Singh v. State of M.P.] ...191

Service Law - Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rules 14 & 20 - Departmental Enquiry - Charge-sheet - Delay in completion of proceedings - Quashment - Quashment of charge-sheet sought on the ground that proceeding continued for 11 long years - Held - The delay can be a ground for interfering in departmental proceeding but in the case at hand delay is not only attributed to the department but to the petitioner also hence no interference called for. [Pramod Kumar Agrawal v. State of M.P.] ...145

Service Law - Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rules 14 & 20 - Departmental Enquiry - Charge-sheet - Quashment of charge-sheet sought on the ground that petitioner being on deputation cannot be charge-sheeted by the borrowing department - Held - Under sub-rule (1) of Rule 20, the borrowing authority has the powers of the appointing authority for the purpose of placing such government servant,

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(x) — जाति से बुलाना — अपीलार्थी ने कहा "चमरावाला गर्रा रहा है" — अभिनिर्धारित — किसी व्यक्ति को लोक दृष्टिगोचर स्थान में अपमानित या शर्मिंदा करने के आशय से जाति से बुलाना अधिनियम की धारा 3(1)(x) के अन्तर्गत अपराध है — अपील खारिज। (हिम्मत सिंह वि. म.प्र. राज्य) ...503

सेवा विधि — चरित्र और पूर्ववर्ती सत्यापन रॉल — इस तथ्य का अप्रकटीकरण कि अपीलार्थी को भारतीय दण्ड संहिता के अपराधों के अन्तर्गत अभियोजित किया गया — अपीलार्थी अपराध किये जाने की तारीख को किशोर था — अभिनिर्धारित — उसकी किशोरावस्था के दौरान नियमित मजिस्ट्रेट द्वारा उसका अभियोजन अधिकारिता विहीन था और ऐसे प्रकटीकरण द्वारा वह कोई निरर्हता अर्जित नहीं कर सका था — अपीलार्थी द्वारा कोई सारवान जानकारी छिपाया जाना नहीं कहा जा सकता। (अशोक शर्मा वि. यूनियन ऑफ इंडिया) ...326

सेवा विधि — सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14(5) — विभागीय जाँच — जाँच अधिकारी — प्रस्तुतकर्ता अधिकारी — जाँच अधिकारी ने प्रस्तुतकर्ता अधिकारी के रूप में कार्य किया — अभिनिर्धारित — जाँच अधिकारी ने अभियोजक और न्यायाधीश के रूप में कार्य किया इस प्रकार सम्पूर्ण जाँच दूषित हो गयी। (बलवीर सिंह वि. म.प्र.राज्य) ...191

सेवा विधि — सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14(5), पुलिस विनियम, म.प्र. — विभागीय जाँच — जाँच अधिकारी — प्रस्तुतकर्ता अधिकारी — जाँच अधिकारी ने प्रस्तुतकर्ता अधिकारी के रूप में कार्य किया — प्रत्यर्थी का यह कहना था कि पुलिस विनियम में प्रस्तुतकर्ता अधिकारी नियुक्त करने के लिए कोई उपबंध नहीं है — अभिनिर्धारित — पुलिस कर्मचारियों के मामले में 1966 के नियम ब्रूहत् रूप से लागू होते हैं इसलिए जब नियम, 1966 के अन्तर्गत प्रस्तुतकर्ता अधिकारी की नियुक्ति का उपबंध है, तब उसका अनुसरण किया जाना चाहिए। (बलवीर सिंह वि. म.प्र.राज्य) ...191

सेवा विधि — सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 व 20 — विभागीय जाँच — आरोप पत्र — कार्यवाहियों के समापन में विलम्ब — अभिखंडन — आरोप पत्र का अभिखंडन इस आधार पर चाहा गया कि कार्यवाही 11 वर्ष की लम्बी अवधि तक जारी रही — अभिनिर्धारित — विभागीय कार्यवाही में हस्तक्षेप करने के लिए विलम्ब आधार हो सकता है किन्तु प्रस्तुत मामले में विलम्ब न केवल विभाग के कारण हुआ बल्कि याची के कारण भी हुआ, इसलिए किसी हस्तक्षेप की माँग नहीं की जा सकती। (प्रमोद कुमार अग्रवाल वि. म.प्र. राज्य) ...145

सेवा विधि — सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 व 20 — विभागीय जाँच — आरोप पत्र — आरोप पत्र का अभिखंडन इस आधार पर चाहा गया कि याची प्रतिनियुक्ति पर होने से प्रतिनियुक्ति पर लेने वाले विभाग द्वारा आरोप पत्र नहीं लगाया जा सकता था — अभिनिर्धारित — नियम 20 के उपनियम (1) के अन्तर्गत प्रतिनियुक्ति पर लेने वाला प्राधिकारी ऐसे शासकीय कर्मचारी को प्रतिनियुक्ति पर, निलंबन के अधीन रखने के प्रयोजन के लिए नियुक्ति प्राधिकारी की और अनुशासनिक कार्यवाही करने के प्रयोजन के लिए

on deputation, under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding. [Pramod Kumar Agrawal v. State of M.P.] ...145

Service Law - Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rules 14 & 20 - Departmental Enquiry - Charge-sheet - Quashment sought on the ground that various enquiry officers were changed - Held - It is the procedural fairness which is to be observed in the D.E. - In the case at hand procedure envisaged in Rule 14 & 15 has been adhered to and no prejudice is said to have been caused. [Pramod Kumar Agrawal v. State of M.P.] ...145

Service Law - Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rule 18 - Departmental Enquiry - Common proceedings - Two delinquent employees tried in a common proceeding but no order in respect of common proceeding under Rule 18 was passed - Held - The requirement of passing such an order arises where the delinquent employees are holding the different ranks - In the present case, the delinquent employees were holding the same ranks and therefore no such order was required to be passed under Rule 18. [Balveer Singh v. State of M.P.] ...191

Service Law - Civil Services (General Conditions of Service) Rules, M.P. 1961, Rule 12(1)(a) & 12(1)(f) - Fixation of seniority - Petitioners' probation period extended and they were confirmed after the extended period - The juniors of the petitioner who were selected in a subsequent batch completed probation in time and they were granted seniority above the petitioners - Held - There is a marked and sharp distinction between selection, appointment and confirmation - Such direction could not be kept in oblivion by the State Government - Petitioners could not be awarded seniority below the persons who have been selected/appointed under the subsequent selection process. [Suresh Kumar v. State of M.P.] ...815

Service Law - Civil Services (General Conditions of Service) Rules, M.P. 1961, Rule 12(1)(a) & 12(1)(f) - Fixation of seniority - Rule 12(1)(a) and Rule 12(1)(f) do not operate different fields - These rules are to be read in juxta position. [Suresh Kumar v. State of M.P.] ...815

Service Law - Civil Services (Pension) Rules, M.P. 1976, Rule 42(1)(b) - Compulsory retirement - Petitioner compulsorily retired after 24 years of service - Held - If the entire record of the petitioner is seen then in 23 years his remarks are either Good or Average only one adverse entry cannot be a ground to compulsorily retire him as he cannot be said to be deadwood especially when his integrity, honesty and decrease in physical efficiency are not at all adverse - Order even does not state that the decision is taken in public interest - Petition allowed. [Bhagvant Singh Parihar v. State of M.P.] ...199

अनुशासनिक प्राधिकारी की शक्ति रखता है। (प्रमोद कुमार अग्रवाल वि. म.प्र. राज्य) ...145

सेवा विधि - सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 व 20 - विभागीय जाँच - आरोप पत्र - अभिखंडन इस आधार पर चाहा गया कि कई जाँच अधिकारी बदल दिये गये - अभिनिर्धारित - यह एक प्रक्रिया संबंधी औचित्य है जिसका विभागीय जाँच में अनुपालन किया जाना चाहिए - प्रस्तुत मामले में नियम 14 व 15 में परिकल्पित प्रक्रिया का अनुसरण किया गया है और कोई पूर्वाग्रह कारित होना नहीं कहा जा सकता है। (प्रमोद कुमार अग्रवाल वि. म.प्र. राज्य) ...145

सेवा विधि - सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 18 - विभागीय जाँच - सामान्य कार्यवाहियाँ - दो अपचारी कर्मचारियों का एक ही कार्यवाही में विचारण किया गया किन्तु नियम 18 के अन्तर्गत एक ही कार्यवाही करने के सम्बन्ध में कोई आदेश पारित नहीं किया गया - अभिनिर्धारित - ऐसा आदेश पारित करने की आवश्यकता वहाँ होती है जहाँ अपचारी कर्मचारी भिन्न-भिन्न श्रेणी धारित करते हों - वर्तमान मामले में अपचारी कर्मचारी समान श्रेणी धारित करते थे इसलिए नियम 18 के अन्तर्गत ऐसा आदेश पारित करने की कोई आवश्यकता नहीं थी। (बलवीर सिंह वि. म.प्र. राज्य) ...191

सेवा विधि - सिविल सेवा (सेवा की सामान्य शर्तें) नियम, म.प्र., 1961, नियम 12(1)(ए) व 12(1)(एफ) - ज्येष्ठता का नियतन - याचियों की परीक्षा अवधि बढ़ायी गई और बढ़ायी गई अवधि के पश्चात् उन्हें स्थायी किया गया - याची से कनिष्ठ कर्मियों ने, जो पश्चात्पूर्व बच में चयनित हुए थे, परीक्षा समय पर पूरी की और उन्हें याचियों से ऊपर ज्येष्ठता प्रदान की गयी - अभिनिर्धारित - चयन, नियुक्ति और स्थायीकरण के बीच स्पष्ट और सुनिश्चित विभेद है - राज्य सरकार द्वारा ऐसे निर्देश को विस्मृत नहीं किया जा सकता - याचियों को उन व्यक्तियों के नीचे ज्येष्ठता प्रदान नहीं की जा सकती जो पश्चात्पूर्व चयन प्रक्रिया के अन्तर्गत चयनित/नियुक्त किये गये हैं। (सुरेश कुमार वि. म.प्र. राज्य) ...815

सेवा विधि - सिविल सेवा (सेवा की सामान्य शर्तें) नियम, म.प्र., 1961, नियम 12(1)(ए) व 12(1)(एफ) - ज्येष्ठता का नियतन - नियम 12(1)(ए) और नियम 12(1)(एफ) भिन्न क्षेत्रों में कार्यान्वित नहीं होते - इन नियमों को साथ-साथ पढ़ा जाना चाहिए। (सुरेश कुमार वि. म.प्र. राज्य) ...815

सेवा विधि - सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42(1)(बी) - अनिवार्य सेवानिवृत्ति - याची को 24 वर्ष की सेवा के बाद अनिवार्य रूप से सेवानिवृत्त किया गया - अभिनिर्धारित - यदि याची का सम्पूर्ण अभिलेख देखा जाए तब 23 वर्षों में उसके रिमार्क या तो "उत्तम" हैं या "औसत", केवल एक प्रतिकूल प्रविष्टि उसे अनिवार्य रूप से सेवानिवृत्त किये जाने का आधार नहीं हो सकती है क्योंकि उसे अनुपयोगी व्यक्ति नहीं कहा जा सकता विशेषतः जब उसकी अखण्डता, ईमानदारी और शारीरिक क्षमता में कमी प्रतिकूल नहीं हैं - आदेश यह भी कथित नहीं करता कि निर्णय लोक हित में लिया गया - याचिका मंजूर। (भगवन्त सिंह परिहार वि. म.प्र. राज्य) ...199

Service Law - Civil Services (Pension) Rules, M.P. 1976, Rule 47 - Family Pension - Denied on the ground that deceased government servant didn't complete 25 years qualifying service - Held - If a government servant, who is not governed by the Workmen's Compensation Act, 1923, dies while in service after having rendered not less than 7 years continuous service, the family pension is payable - Petition allowed. [Kamla (Smt.) v. State of M.P.] ...593

Service Law - Class III (Non-ministerial) Forest Service Recruitment Rules, M.P. 1967, Rule 15, Class III (Non-ministerial) Forest Service Recruitment Rules, M.P. 1999, Rule 16 - Petitioner selected as Forester by State level examination and posted in forest circle - His seniority is maintained at forest circle level - His other batch mates or some other juniors have been allotted to some other circles and obtained promotions earlier by virtue of availability of earlier vacancies - Held - It could not be said to be a case of discrimination. [N.K. Dubey v. State of M.P.] ...836

Service Law - Class III (Non-Ministerial) Forest Service Recruitment Rules, M.P. 1967, Rule 15, Class III (Non-Ministerial) Forest Services Recruitment Rules, M.P. 1999, Rule 16 - Seniority of Forester is maintained circle wise under Rules of 1967 and also under Rules 1999 - Held - Rules not in violation of Article 14 & 16 of Constitution - Rules cannot be said to be arbitrary or ultra vires in any manner. [N.K. Dubey v. State of M.P.] ...836

Service Law - Constitution, Article 226 - Disputed facts - Cannot be decided in writ petition - Application filed for correction of date of birth along with transfer certificate, scholar's register and duplicate copy of the mark-sheet of Board of Secondary Education - These documents were never submitted before the respondents for correction of date of birth - Their authenticity is disputed - Disputed questions of fact cannot be decided in writ petition - Petition dismissed. [Vishvanath Mishra v. Chief Managing Director, Western Coal Fields Ltd.] ...864

Service Law - Constitution, Article 311 - In the attestation form, it was a term that an employee could be terminated without notice if he furnishes false informations - Held - Such term may bind a probationer, but not a confirmed government servant - No term in the attestation form nor any consent given by government servant can take away the constitutional safeguard provided to a government servant under Article 311. [Kamal Nayan Mishra v. State of M.P.] SC...17

Service Law - Constitution, Article 311 - Termination without notice or enquiry - A confirmed employee holding a civil post terminated without notice or enquiry on furnishing wrong information in attestation form during the course of employment - Held - Once a probationer is confirmed in the

सेवा विधि - सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 47 - परिवार पेंशन - इस आधार पर इंकार की गयी कि मृतक शासकीय सेवक ने 25 वर्ष की अर्हता सेवा पूर्ण नहीं की थी - अभिनिर्धारित - यदि किसी शासकीय सेवक की, जो कर्मकार प्रतिकर अधिनियम, 1923 से शासित नहीं होता है, निरंतर सेवाएँ, जो 7 वर्ष से कम नहीं हैं, देने के बाद सेवा में रहते हुए मृत्यु हो जाती है, परिवार पेंशन देय है - याचिका मंजूर। (कमला (श्रीमति) वि. म.प्र. राज्य) ...593

सेवा विधि - तृतीय वर्ग (अलिपिकवर्गीय) वन सेवा भर्ती नियम, म.प्र. 1967, नियम 15, तृतीय वर्ग (अलिपिकवर्गीय) वन सेवा भर्ती नियम, म.प्र. 1999, नियम 16 - राज्य स्तरीय परीक्षा द्वारा याची का वनपाल के रूप में चयन हुआ और वन वृत्त में नियुक्ति की गयी - उसकी ज्येष्ठता वन वृत्त स्तर पर रखी गई - उसके अन्य सहकर्मी या कुछ अन्य कनिष्ठों को कुछ अन्य वृत्त आवंटित किये गए और पूर्वतर रिक्रियों की उपलब्धता के आधार पर उन्होंने पहले पदोन्नति प्राप्त कर ली - अभिनिर्धारित - यह विभेद का मामला नहीं कहा जा सकता। (एन.के. दुबे वि. म.प्र. राज्य) ...836

सेवा विधि - तृतीय वर्ग (अलिपिकवर्गीय) वन सेवा भर्ती नियम, म.प्र. 1967, नियम 15, तृतीय वर्ग (अलिपिकवर्गीय) वन सेवा भर्ती नियम, म.प्र. 1999, नियम 16 - नियम 1967 के अन्तर्गत तथा नियम 1999 के भी अंतर्गत वनपाल की ज्येष्ठता वृत्त अनुसार रखी जाती है - अभिनिर्धारित - नियम संविधान के अनुच्छेद 14 और 16 के उल्लंघन में नहीं हैं - नियम किसी भी प्रकार से मनमाने या अधिकांशतः नहीं कहे जा सकते हैं। (एन.के. दुबे वि. म.प्र. राज्य) ...836

सेवा विधि - संविधान, अनुच्छेद 226 - विवादग्रस्त तथ्य - रिट याचिका में विनिश्चित नहीं किये जा सकते - जन्म तिथि के सुधार के लिए आवेदन स्थानांतरण प्रमाण पत्र, छात्र रजिस्टर और माध्यमिक शिक्षा मण्डल की अंकसूची की दूसरी प्रति सहित पेश किया गया - ये दस्तावेज जन्म तिथि में सुधार के लिए प्रत्यर्थियों के समक्ष कभी पेश नहीं किये गये - उनकी प्रमाणिकता विवादग्रस्त - तथ्य के विवादग्रस्त प्रश्न रिट याचिका में विनिश्चित नहीं किये जा सकते - याचिका खारिज। (विश्वनाथ मिश्रा वि. चीफ मेनेजिंग डायरेक्टर, वेस्टर्न कोलफील्ड्स लि.) ...864

सेवा विधि - संविधान, अनुच्छेद 311 - अनुप्रमाणन फॉर्म में यह निबंधन था कि किसी कर्मचारी की सेवा, यदि वह मिथ्या जानकारी देता है तो बिना किसी सूचना के समाप्त की जा सकती है - अभिनिर्धारित - ऐसा निबंधन परीवीक्षाधीन व्यक्ति को बांध सकता है किन्तु स्थायी शासकीय सेवक को नहीं - अनुप्रमाणन फॉर्म का कोई निबंधन या शासकीय सेवक द्वारा दी गई कोई सम्मति शासकीय सेवक को अनुच्छेद 311 के अन्तर्गत दिये गये संवैधानिक संरक्षण से दूर नहीं ले जा सकती। (कमल नयन मिश्रा वि. म.प्र. राज्य) SC---17

सेवा विधि - संविधान, अनुच्छेद 311 - बिना किसी सूचना या जाँच के सेवा समाप्ति - सिविल पद धारण करने वाले एक स्थायी कर्मचारी की सेवा नियोजन के अनुक्रम में अनुप्रमाणन फॉर्म में गलत जानकारी देने पर बिना किसी सूचना या जाँच के समाप्त की गयी - अभिनिर्धारित - जब कोई परीवीक्षाधीन व्यक्ति पद पर स्थायी हो जाता है तब उसका स्तर और

post, his position and status becomes different as he gets the protection of Article 311 - If it is found that the confirmed government servant has given any false information during the course of employment, that will have to be treated as misconduct and punishment can be imposed only after subjecting him to an appropriate disciplinary proceeding as per the relevant service rules. [Kamal Nayan Mishra v. State of M.P.] SC...17

Service Law - Constitution, Article 311 - *The ratio decidendi of Ram Ratan Yadav's case [(2003) 3 SCC 437] is not applicable in this case - There are several features in this case which distinguish it from Ram Ratan Yadav's case - Discussed. [Kamal Nayan Mishra v. State of M.P.] SC...17*

Service Law - Correction of date of birth - Alternative remedy - Writ *Petition filed neared the age of superannuation for issuing direction for correction of date of birth - Petitioner is a workman under the provisions of Industrial Disputes Act, 1947 - He has an alternative remedy of raising the dispute under the provisions of Industrial Disputes Act, 1947 - Petition dismissed. [Vishvanath Mishra v. Chief Managing Director, Western Coal Fields Ltd.] ...864*

Service Law - Correction of date of birth - Delay - Application for correction of date of birth filed after 34 years of service - No reliable documentary evidence adduced in support of claim - No explanation for delayed action - No direction can be issued - Petition dismissed. [Vishvanath Mishra v. Chief Managing Director, Western Coal Fields Ltd.] ...864

Service Law - Delay and laches - Appellant was given out of turn promotion in 1997 for his exemplary gallantry act in 1992 - Held - Appellant had approached High Court after lot of delay - If the appellant is given promotion w.e.f. 07.09.1992, then all those officers who were promoted between 1992 to 1997 would be adversely affected - Single Judge rightly dismissed the writ petition on the ground of delay & laches. [Atma Ram Sharma v. State of M.P.] ...25

Service Law - Departmental Enquiry - Charge of demand of illegal gratification and misbehave with complainant - During the enquiry proceedings, complainant himself has categorically denied the involvement of the employee in the incident - Even though enquiry officer has recorded findings against employee - The findings are perverse in nature. [Rajesh Upadhyay v. State of M.P.] ...844

Service Law - Departmental Enquiry - Charge sheet - Criminal trial - Allegation of similar charges in D.E. and criminal trial - Whether both can run simultaneously - Held - D.E. is being held regarding conduct of the petitioner, which is unbecoming of a police official which is different than the charges in the criminal case under offence punishable under the Public Gambling (Madhya Pradesh) Act, 1867 - Petition dismissed. [Sunil Pillai v. State of M.P.] ...77

Service Law - Departmental Enquiry - Delay in initiation - Charge-

प्रास्थिति भिन्न हो जाता है क्योंकि वह अनुच्छेद 311 का संरक्षण प्राप्त कर लेता है - यदि यह पाया जाता है कि किसी स्थायी शासकीय कर्मचारी ने नियोजन के अनुक्रम में कोई मिथ्या जानकारी दी है, तब उसे कदाचरण माना जायेगा और उसे सुसंगत सेवा नियमों के अनुसार समुचित अनुशासनिक कार्यवाही के अध्याधीन रखने के बाद ही दण्ड अधिरोपित किया जा सकता है। (कमल नयन मिश्रा वि. म.प्र. राज्य) SC---17

सेवा विधि - संविधान, अनुच्छेद 311 - राम रतन यादव के मामले [(2003) 3 SCC 437] के विनिश्चय-आधार इस मामले में लागू किये जाने योग्य नहीं हैं - इस मामले में कई लक्षण हैं जो इसे राम रतन यादव के मामले से विभेदित करते हैं - विवेचना की गई। (कमल नयन मिश्रा वि. म.प्र. राज्य) SC---17

सेवा विधि - जन्म तिथि का सुधार - वैकल्पिक उपचार - जन्म तिथि के सुधार के लिए निदेश जारी करने के लिए अधिवर्षिता की आयु के निकट रिट याचिका पेश की गयी - याची औद्योगिक विवाद अधिनियम, 1947 के उपबंधों के अन्तर्गत कर्मकार - उसे औद्योगिक विवादित अधिनियम, 1947 के उपबंधों के अन्तर्गत विवाद उठाने का वैकल्पिक उपचार है - याचिका खारिज। (विश्वनाथ मिश्रा वि. चीफ मेनेजिंग डायरेक्टर, वेस्टर्न कोलफील्ड्स लि.) ...864

सेवा विधि - जन्म तिथि का सुधार - विलम्ब - जन्म तिथि के सुधार के लिए आवेदन सेवा के 34 वर्ष बाद पेश किया गया - दावे के समर्थन में कोई विश्वसनीय दस्तावेजी साक्ष्य पेश नहीं की गयी - विलम्बित कार्यवाही के लिए कोई स्पष्टीकरण नहीं - कोई निदेश जारी नहीं किया जा सकता - याचिका खारिज। (विश्वनाथ मिश्रा वि. चीफ मेनेजिंग डायरेक्टर, वेस्टर्न कोलफील्ड्स लि.) ...864

सेवा विधि - विलम्ब और उपेक्षा - अपीलार्थी को उसके 1992 के अनुकरणीय वीरतापूर्ण कार्य के लिए 1997 में बिना पुरी पदोन्नति दी गई - अभिनिर्धारित - अपीलार्थी ने काफी विलम्ब बाद उच्च न्यायालय से निवेदन किया था - यदि अपीलार्थी को 07.09.1992 से पदोन्नति दी जाती है तब वे सभी अधिकारी जो 1992 से 1997 के मध्य पदोन्नत किये गये, प्रतिकूल रूप से प्रभावित होंगे - एकल न्यायाधीश ने रिट याचिका विलम्ब और उपेक्षा के आधार पर उचित रूप से खारिज की। (आत्मा राम शर्मा वि. म.प्र. राज्य) ...25

सेवा विधि - विभागीय जाँच - अवैध परितोषण की माँग और परिवादी के साथ अमर व्यवहार करने का आरोप - जाँच कार्यवाहियों के दौरान, स्वयं परिवादी ने घटना में कर्मचारी के अंतर्ग्रस्त होने से स्पष्ट रूप से इनकार किया - फिर भी जाँच अधिकारी ने कर्मचारी के विरुद्ध निष्कर्ष अभिलिखित किये - निष्कर्ष विपर्यस्त प्रकृति के हैं। (राजेश उपाध्याय वि. म.प्र. राज्य) ...844

सेवा विधि - विभागीय जाँच - आरोप पत्र - दण्डिक विचारण - विभागीय जाँच और दण्डिक विचारण में समरूप आरोपों का अभिकथन - क्या दोनों साथ-साथ चल सकते हैं - अभिनिर्धारित - विभागीय जाँच याची के आचरण के सम्बन्ध में की जा रही है जो एक पुलिस अधिकारी के लिए अशोभनीय है जो सार्वजनिक द्यूत (मध्य प्रदेश) अधिनियम, 1867 के अन्तर्गत दण्डनीय अपराध के अन्तर्गत दण्डिक मामले में आरोपों से भिन्न है - याचिका खारिज। (सुनील पिल्लई वि. म.प्र. राज्य) ...77

सेवा विधि - विभागीय जाँच - आरम्भ करने में विलम्ब - आरोप पत्र 2 वर्ष 4 माह

sheet issued after a period of 2 years 4 months - Challenged on the ground of delay - Held - Such period in issuance of charge-sheet cannot be said to be a period which can be termed as period of inordinate delay warranting quashment of charge-sheet when no prejudice has been caused due to delay. [Binda Prasad v. Narmada Malwa Gramin Bank] ...833

Service Law - Development Authority Services (Officer and Servants) Recruitment Rules, M.P. 1987, Rules.2(b), 8 & 53 - Show cause notice for disciplinary action issued by C.E.O. - Held - C.E.O. is nowhere shown to be a disciplinary authority - No delegation of power in his favour - Action initiated by C.E.O. without authority - Show cause notice quashed - Petition allowed. [Ramesh Singh Thakur v. Jabalpur Development Authority]...827

Service Law - Disciplinary Proceedings - Supply of documents - Documents sought by petitioner were not mandatory requirement under any statutory provision - Most of the documents sought by the petitioner were either produced and made available and those which were not produced were either not available or were not relevant - It was not shown that non-supply caused prejudice to petitioner - Merely on the basis of vague and unspecified allegation regarding non-supply of documents, interference into matter not warranted - Petition dismissed. [S.C. Mukherjee v. Chairman, State Bank of India] ...391

Service Law - Double jeopardy - Once the punishment of censure was inflicted by the disciplinary authority in respect of absence from the duty without prior sanction of the leave - The question of punishing the employee on the basis of charge of misconduct amounts to double jeopardy - Even though disciplinary authority has subsequently cancelled the order of censure and order of dismissal has been passed. [Rajesh Upadhyay v. State of M.P.] ...844

Service Law - Enquiry officer - Judge/Prosecutor - Enquiry officer has conducted a regular cross-examination of witnesses - He has also conducted the cross-examination of delinquent - Meaning thereby, the enquiry officer, has assumed the role of the prosecutor while acting as a Judge in the departmental proceedings - Not permissible. [Rajesh Upadhyay v. State of M.P.] ...844

Service Law - Interest on retiral benefits - Petitioner attained the age of superannuation on 30.04.2007, but terminal dues have not been finalized after lapse of more than 2 years - Petitioner is entitled for interest on delayed payment of retiral dues. [Kirti Saxena (Dr.) (Smt.) v. State of M.P.] ...368

Service Law - Natural justice - 22 Shiksha Karmis were selected and appointed - Before Appellate Authority allegations were made only against 8 candidates - Appellate Authority set-aside the whole selection list - Held - When no allegations were made against others, setting-aside the entire selection process has caused serious injustice to those persons who were not extended even an opportunity of hearing before the Appellate Authority - Principle of natural justice requires that such an opportunity of hearing

पश्चात् जारी किया - विलम्ब के आधार पर चुनौती - अभिनिर्धारित - जब विलम्ब के कारण कोई प्रतिकूल प्रभाव कारित नहीं हुआ हो तब आरोप पत्र जारी करने की ऐसी अवधि को वह अवधि नहीं कहा जा सकता जिसे आरोप पत्र अभिखंडित करने हेतु अत्यधिक विलम्ब की अवधि माना जा सके। (बिन्दा प्रसाद वि. नर्मदा मलवा ग्रामीण बैंक) ...833

सेवा विधि - विकास प्राधिकरण सेवा (अधिकारी और कर्मचारी) भर्ती नियम, म.प्र. 1987, नियम 2(बी), 8 व 53 - मुख्य कार्यपालक अधिकारी द्वारा अनुशासनिक कार्यवाही के लिए कारण बताओ सूचना पत्र जारी किया गया - अभिनिर्धारित - मुख्य कार्यपालक अधिकारी का अनुशासनात्मक प्राधिकारी होना कहीं भी दर्शित नहीं - उसके पक्ष में शक्ति का कोई प्रत्यायोजन नहीं - मुख्य कार्यपालक अधिकारी द्वारा आरम्भ की गयी कार्यवाही प्राधिकार विहीन - कारण बताओ सूचना पत्र अभिखंडित - याचिका संजूर। (रमेश सिंह ठाकुर वि. जबलपुर डेहलपमेंट अथॉरिटी) ...827

सेवा विधि - अनुशासनिक कार्यवाहियाँ - दस्तावेजों का प्रदाय - याची द्वारा चाहे गये दस्तावेज किसी कानूनी उपबंध के अन्तर्गत आज्ञापक अपेक्षा नहीं थी - याची द्वारा चाहे गये अधिकांश दस्तावेज या तो पेश और उपलब्ध कराये गये और वे दस्तावेज जो पेश नहीं किये गये या तो उपलब्ध नहीं थे या सुसंगत नहीं थे - यह नहीं दर्शाया गया कि अप्रदाय के कारण याची को पूर्वाग्रह कारित हुआ - दस्तावेजों के अप्रदाय से सम्बन्धित अस्पष्ट और अविनिर्दिष्ट अभिकथनों के आधार पर, मामले में हस्तक्षेप आवश्यक नहीं - याचिका खारिज। (एस.सी. मुखर्जी वि. चेरमेन, स्टेट बैंक ऑफ इंडिया) ...391

सेवा विधि - दोहरा संकट - जब एक बार अवकाश की पूर्वमंजूरी के बिना कर्तव्य से अनुपस्थिति के सम्बन्ध में अनुशासनिक प्राधिकारी द्वारा परिनिंदा का दण्ड दे दिया गया - कदाचार के आरोप के आधार पर कर्मचारी को दण्डित करने का प्रश्न दोहरे संकट की कोटि में आता है - यद्यपि अनुशासनिक प्राधिकारी ने तत्पश्चात् परिनिंदा का आदेश रद्द कर दिया हो और पदच्युति का आदेश पारित किया हो। (राजेश उपाध्याय वि. म.प्र. राज्य) ...844

सेवा विधि - जाँच अधिकारी - न्यायाधीश/अभियोजक - जाँच अधिकारी ने साक्षियों की नियमित प्रतिपरीक्षा की - उन्होंने अपचारी की प्रतिपरीक्षा भी की - जिसका अर्थ है, जाँच अधिकारी ने विभागीय कार्यवाहियों में न्यायाधीश के रूप में कार्य करते समय अभियोजक की भूमिका ग्रहण कर ली - अनुज्ञेय नहीं। (राजेश उपाध्याय वि. म.प्र. राज्य) ...844

सेवा विधि - सेवानिवृत्ति लाभों पर ब्याज - याची ने अधिवार्षिकी आयु तारीख 30.04.2007 को प्राप्त की, किन्तु सेवान्त बकाया का 2 वर्ष से अधिक बीत जाने के बाद भी अंतिम रूप से निपटारा नहीं किया - याची सेवान्त बकाया के विलम्ब से किये गये भुगतान के लिए ब्याज का हकदार है। (कीर्ति सक्सेना (डॉ.) (श्रीमति) वि. म.प्र. राज्य) ...368

सेवा विधि - नैसर्गिक न्याय - 22 शिक्षा कर्मियों का चयन और नियुक्ति - अपील प्राधिकारी के समक्ष केवल 8 अभ्यर्थियों के विरुद्ध अभिकथन किये गये - अपील प्राधिकारी ने सम्पूर्ण चयन सूची को अपास्त किया - अभिनिर्धारित - जब अन्य के विरुद्ध कोई अभिकथन नहीं किये गये, तब सम्पूर्ण चयन प्रक्रिया अपास्त करने से उन व्यक्तियों के साथ घोर अन्याय हुआ जिन्हें अपील प्राधिकारी के समक्ष सुनवाई का अवसर तक नहीं दिया गया - नैसर्गिक न्याय का सिद्धांत यह अपेक्षा करता है कि सुनवाई का ऐसा अवसर दिया जाना चाहिए जब तक कि यह नहीं पाया जाए कि ऐसा कोई

should be extended until & unless it is found that no such opportunity was necessary - Order of Appellate Authority quashed - Petition allowed. [Anjum Shekh (Smt.) v. State of M.P.] ...901

Service Law - Necessary party - Select list of Shiksha Karmis challenged without impleading appointed candidates-as party in appeal - Appellate Authority set-aside the selection list - Held - When the appointed candidates were directly affected in the matter they ought to have been impleaded as party - In such circumstances, by non-impleading such candidates, there was serious defect of non-joinder of necessary party. [Anjum Shekh (Smt.) v. State of M.P.] ...901

Service Law - Petitioner was terminated on account of pendency of criminal case - Thereafter, he was acquitted and order of acquittal was affirmed - Application for reinstatement filed on 11.10.1980 - Re-appointed on 22.07.1996 with the direction that intervening period has been treated as break in service - Held - Delay in passing order of reinstatement was on the part of authorities & State - Petitioner shall be deemed to have been reinstated in service on his acquittal and the entire period shall be counted for the purpose of pension and entitled for 25% back wages for the period 11.10.1980 to 22.07.1996. [Dwarka Prasad Kasyap v. State of M.P.] ...417

Service Law - Police Regulations, M.P., Regulation 70-A - Out of turn promotion - Relevant date - Appellant was given out of turn promotion in 1997 for his exemplary gallantry act in 1992 - Petition filed that he should be given promotion from the date of incident - Single Judge held that there is no provision in Regulation 70-A that out of turn promotion is to be given w.e.f. the date of the incident - Writ Appeal - Held - D.B. affirmed the judgment - Writ Appeal dismissed. [Atma Ram Sharma v. State of M.P.] ...25

Service Law - Police Regulations, M.P., Regulation 270 - Suo motu revision - Natural Justice - Petitioner was inflicted with punishment of censure which suo motu revised by the Higher Authority and D.E. was initiated against him - Held - Before cancelling the order of penalty and ordering for issuance of the charge-sheet and for holding D.E., it was necessary for the revising authority to have issued a notice to the petitioner to show cause and to have given an opportunity of hearing to him - Action not only contrary to the provisions contained in the Regulation 270 but is also violative of principles of natural justice. [Rajendra Kumar Chaturvedi v. State of M.P.] ...374

Service Law - Promotion - Non-availability of confidential reports of previous year, availability of anticipated vacancies, objection of employee's union, recommendation of Minister for postponement of DPC ignored by DPC - Department acted in a very unreasonable, unjust and arbitrary manner in promotion - Held - The Government was justified in ordering review DPC. [Ashok Kumar Shukla v. State of M.P.] ...870

अवसर आवश्यक नहीं था - अपील प्राधिकारी का आदेश अभिखंडित - याचिका मंजूर। (अंजुम शेख (श्रीमति) वि. म.प्र. राज्य) ...901

सेवा विधि - आवश्यक पक्षकार - शिक्षा कर्मियों की चयन सूची को नियुक्त अभ्यर्थियों को अपील में पक्षकार बनाये बिना चुनौती दी गयी - अपील प्राधिकारी ने चयन सूची को अपास्त किया - अभिनिर्धारित - जब मामले में नियुक्त अभ्यर्थी सीधे प्रभावित हुए थे, उन्हें पक्षकार बनाया जाना चाहिए था - इन परिस्थितियों में ऐसे अभ्यर्थियों को पक्षकार न बनाने से आवश्यक पक्षकार के असंयोजन की गम्भीर त्रुटि हुई। (अंजुम शेख (श्रीमति) वि. म.प्र. राज्य) ...901

सेवा विधि - याची को दाण्डिक मामला लम्बित होने के कारण बर्खास्त किया गया - बाद में उसे दोषमुक्त किया गया और दोषमुक्ति के आदेश की पुष्टि की गयी - पुनर्नियुक्ति का आवेदन 11.10.1980 को पेश किया - 22.07.1996 को इस निदेश के साथ पुनर्नियुक्ति किया गया कि मध्यवर्ती कालावधि को सेवा में व्यवधान माना जाए - अभिनिर्धारित - पुनर्नियुक्ति का आदेश पारित करने में विलम्ब प्राधिकारियों और राज्य ने किया था - याची को उसकी दोषमुक्ति पर सेवा में पुनर्नियुक्ति होना समझा जायेगा और पेंशन के प्रयोजन के लिए सम्पूर्ण कालावधि की गणना की जायेगी और 11.10.1980 से 22.07.1996 की कालावधि के लिए 25 प्रतिशत पिछले वेतन का हकदार है। (द्वारका प्रसाद कश्यप वि. म.प्र. राज्य) ...417

सेवा विधि - पुलिस विनियम, म.प्र., विनियम 70-ए - बिना पारी पदोन्नति - सुसंगत तारीख - अपीलार्थी को उसके 1992 के अनुकरणीय वीरतापूर्ण कार्य के लिए 1997 में बिना पारी पदोन्नति दी गई - याचिका पेश की गई कि उसे घटना की तारीख से पदोन्नति दी जानी चाहिए - एकल न्यायाधीश ने अभिनिर्धारित किया कि विनियम 70-ए में कोई उपबंध नहीं है कि बिना पारी पदोन्नति घटना की तारीख से दी जानी चाहिए - रिट अपील - अभिनिर्धारित - खण्ड न्यायपीठ ने निर्णय की पुष्टि की - रिट अपील खारिज। (आत्मा राम शर्मा वि. म.प्र. राज्य) ...25

सेवा विधि - पुलिस विनियम, म.प्र., विनियम 270 - स्वप्रेरणा से पुनरीक्षण - प्राकृतिक न्याय - याची को परिनिन्दा का दण्ड दिया गया जिसका उच्च प्राधिकारी द्वारा स्वप्रेरणा से पुनरीक्षण किया गया और उसके विरुद्ध विभागीय जाँच प्रारम्भ की गयी - अभिनिर्धारित - शास्ति का आदेश रद्द करने और आरोप पत्र जारी करने तथा विभागीय जाँच करने का आदेश देने के पूर्व पुनरीक्षण प्राधिकारी के लिए यह आवश्यक था कि कारण बताने के लिए याची को सूचनापत्र जारी करते और उसे सुनवाई का अवसर प्रदान करते - कृत्य न केवल विनियम 270 में अन्तर्विष्ट उपबंधों के प्रतिकूल है बल्कि नैसर्गिक न्याय के सिद्धांतों का उल्लंघनकारी भी है। (राजेन्द्र कुमार चतुर्वेदी वि. म.प्र. राज्य) ...374

सेवा विधि - पदोन्नति - डी.पी.सी. द्वारा पूर्ववर्ती वर्ष के गोपनीय प्रतिवेदनों की अनुपलब्धता, प्रत्याशित रक्तियों की उपलब्धता, कर्मचारी संघ की आपत्ति, डी.पी.सी. के स्थगन के लिए मंत्री की अनुशंसा की उपेक्षा की गयी - विभाग ने पदोन्नति में बिलकुल अयुक्तियुक्त, अन्यायपूर्ण और मनमाने ढंग से कार्य किया - अभिनिर्धारित - सरकार का डी.पी.सी. पुनर्विलोकन आदेश न्यायोचित। (अशोक कुमार शुक्ला वि. म.प्र. राज्य) ...870

Service Law - Public Services (Promotion) Rules, M.P. 2002, Rule 7(4) - Number of vacancies for promotion during the course of year shall be worked out after taking into account the existing and anticipated vacancies on account of retirement and promotions to higher cadres/part of service/higher pay scale of posts, vacancies arising out of deputation for periods exceeding one year - The intention when rule speaks about vacancies arising out during the course of the year could be for all the vacancies that may arise for any reason, during the course of year. [Ashok Kumar Shukla v. State of M.P.] ...870

Service Law - Service Regulations, 2001, Section 2(i) - Departmental Enquiry - Charge-sheet challenged on the ground that General Manager was not competent to issue charge-sheet - Held - On the basis of proposal made by the Chairman, Board of Directors, in their resolution in a meeting, accepted and have designated Controller/Regional Officer/General Manager not below scale IV as the competent authority within the meaning of Service Regulation - Issuance of charge-sheet by the General Manager is well within his competence and authority. [Binda Prasad v. Narmada Malwa Gramin Bank] ...833

Service Law - Shaskiya Sevak (Adhivārshiki-Ayu) Dwitiya Sanshodhan Adhiniyam, M.P. (28 of 1998), Section 2, Vishwavidyalaya Adhiniyam, M.P. 1973, Statute 28(1)(d), College Code (Statute 28) - Two advance increments awarded for Ph.D. withdrawn on the ground that petitioner is a Principal and not a teacher - Held - Principal is also involved in teaching activities - The post of Principal cannot be excluded from the definition of a teacher - Respondents have extended the benefit of continuance in service by treating the petitioner as a teacher upto the age of 62 years - Withdrawal of benefit of two advance increments is bad in law - Petition allowed. [Kirti Saxena (Dr.) (Smt.) v. State of M.P.] ...368

Service Law - Stay of departmental enquiry during pendency of criminal case - There is no rule of automatic stay of D.E. during pendency of criminal proceeding - Only where complicated questions of law and facts are involved, discretion may be exercised - Since employee has disclosed his defence and charge has been framed in criminal case and evidence has been started in D.E. - No prejudice is going to be caused to employee in D.E. - Application for stay rightly rejected - Petition dismissed. [Gulab Chandra Vishwakarma v. South Eastern Coalfields Ltd.] ...413

Service Law - The appointment in favour of the petitioner being not obtained by misrepresentation or fraud, creates vested rights in favour of petitioner and cannot be taken away unless & otherwise in accordance with law. [Ramesh Singh Thakur v. Jabalpur Development Authority] ...827

Service Law - Value of statement recorded during preliminary enquiry - The conclusion of the enquiry officer based upon the statements of the witnesses recorded during the course of preliminary enquiry - Such statements

सेवा विधि - लोक सेवा (पदोन्नति) नियम, म.प्र. 2002, नियम 7(4) - वर्ष के दौरान पदोन्नति के लिए रिक्तियों की संख्या, विद्यमान और सेवानिवृत्ति तथा उच्च पद पर पदोन्नति के कारण प्रत्याशित रिक्तियों/सेवा के भाग/पदों का उच्च वेतनमान, एक वर्ष से अधिक समय के लिए प्रतिनियुक्ति के फलस्वरूप उत्पन्न रिक्तियों को हिसाब में लेकर की जाएगी - आशय यह है कि जब नियम वर्ष के दौरान उत्पन्न रिक्तियों के बारे में कहता है तो उन सभी रिक्तियों के लिए होगा जो वर्ष के दौरान किसी भी कारण से उत्पन्न हुई हों। (अशोक कुमार शुक्ला वि. म.प्र. राज्य) ...870

सेवा विधि - सेवा विनियम, 2001, धारा 2(i) - विभागीय जाँच - आरोप पत्र को इस आधार पर चुनौती दी गयी कि महाप्रबंधक आरोप पत्र जारी करने के लिए सक्षम नहीं था - अभिनिर्धारित - अध्यक्ष द्वारा दिये गये प्रस्ताव के आधार पर, निदेशक मण्डल ने बैठक में लिये गये संकल्प में नियंत्रक/क्षेत्रीय अधिकारी/महाप्रबंधक, जो वेतनमान चार के नीचे नहीं हैं, को सेवा विनियम के अर्थान्तर्गत सक्षम प्राधिकारी स्वीकार और नामनिर्दिष्ट किया - महाप्रबंधक द्वारा आरोप पत्र जारी करना पूरी तरह उसकी सक्षमता और अधिकारिता में है। (बिन्दा प्रसाद वि. नर्मदा मालवा ग्रामीण बैंक) ...833

सेवा विधि - शासकीय सेवक (अधिवार्षिकी आयु) द्वितीय संशोधन अधिनियम, म.प्र. (1998 का 28), धारा 2, विश्वविद्यालय अधिनियम, म.प्र. 1973, स्टेच्यूट 28(1)(डी), कॉलेज कोड (स्टेच्यूट 28) - पीएच.डी. के लिए दी गई दो अग्रिम वेतन वृद्धियाँ इस आधार पर वापस ले ली गयीं कि याची प्राचार्य है न कि अध्यापक - अभिनिर्धारित - प्राचार्य अध्यापन क्रियाकलापों में भी अन्तर्गस्त होता है - प्राचार्य का पद अध्यापक की परिभाषा से अपवर्जित नहीं किया जा सकता - प्रत्यर्थियों ने याची को अध्यापक मानकर 62 वर्ष की आयु तक सेवा में बने रहने का लाभ दिया है - दो अग्रिम वेतन वृद्धियों का वापस लिया जाना विधि में दोषपूर्ण है - याचिका मंजूर। (कीर्ति सक्सेना (डॉ.) (श्रीमति) वि. म.प्र. राज्य) ...368

सेवा विधि - दाण्डिक मामले के लम्बित रहने के दौरान विभागीय जाँच की रोक - दाण्डिक कार्यवाही के लम्बित रहने के दौरान विभागीय जाँच की स्वतः रोक का कोई नियम नहीं है - केवल वहाँ, जहाँ विधि और तथ्य के जटिल प्रश्न अन्तर्वलित हैं, विवेकाधिकार का प्रयोग किया जा सकता है - चूंकि कर्मचारी अपनी प्रतिरक्षा प्रकट कर चुका है और दाण्डिक मामले में आरोप विरचित किया जा चुका है और विभागीय जाँच में साक्ष्य प्रारम्भ हो चुकी है - विभागीय जाँच में कर्मचारी को कोई पूर्वाग्रह कारित नहीं होने वाला है - रोक का आदेश उचित रूप से नामंजूर किया गया - याचिका खारिज। (गुलाब चन्द्र विश्वकर्मा वि. साउथ ईस्टर्न कोलफील्ड्स लि.) ...413

सेवा विधि - याची द्वारा नियुक्ति दुर्व्यपदेशन या कपट द्वारा अभिप्राप्त न किये जाने से, याची के पक्ष में निहित अधिकार सृष्ट करती है और छीनी नहीं जा सकती जब तक विधि अनुसार और अन्यथा न हो। (रमेश सिंह ठाकुर वि. जबलपुर डेक्कलपमेंट अथॉरिटी) ...827

सेवा विधि - प्रारम्भिक जाँच के दौरान अभिलिखित कथन का मूल्य - जाँच अधिकारी का निष्कर्ष प्रारम्भिक जाँच के दौरान अभिलिखित साक्ष्यों के कथनों पर आधारित - ऐसे

were recorded behind the back of the employee - Therefore, the conclusion stands vitiated. [Rajesh Upadhyay v. State of M.P.] ...844

Service Regulations, 2001, Section 2(i) - See - Service Law
[Bindaprasad v. Narmada Malwa Gramin Bank] ...833

Shaskiya Sevak (Adhivarshiki-Ayu) Dwitiya Sanshodhan Adhiniyam, M.P. (28 of 1998), Section 2 - See - Service Law [Kirti Saxena (Dr.)(Smt.) v. State of M.P.] ...368

Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), Section 20(1) - Winding up of sick companies - Highest bid not accepted - Official Liquidator invited tenders for sale of assets of sick-industry - Resp. No.2 quoted highest amount Rs. 8.01 Crores which was approved by SBI and IDBI as well as of Government - After that, appellant prayed for grant of opportunity to participate in the bid and made offer of Rs. 8.05 Crores - Held - No allegation of fraud or collusion against Resps. - Proceedings of sale were going on for a long time but appellant did not participate before Official Liquidator - Final bid of Resp.No.2 cannot be rejected by a mere increase of Rs. 4 Lacs by appellant - Intervention was made to forestall the transaction rather than to become a bona fide tenderer at proper time - Application rightly rejected - Appeal dismissed. [Ambo Exports Ltd., Kolkata v. Shri Ishar Agro Ltd.] ...820

Specific Relief Act (47 of 1963), Section 6 - After dispossession, defendant constructed two Pucca rooms on the suit property - Suit u/s 6 of the Act - Decree for restoration of possession with the direction to the defendant for removal of construction - Held - Court has no power to direct for removal of construction in a suit u/s 6 of the Act - Such direction set-aside - Decree modified accordingly. [Ramniwas Sharma v. Smt. Jasoda Bai] ...691

Specific Relief Act (47 of 1963), Section 6, Civil Procedure Code, 1908, Section 115 - Remedy against a decision u/s 6 of the Act - Unsuccessful party can file a suit based on title - Remedy of filing a revision is available but that is only by way of an exception - Held - In the present case, direction for removal of construction issued which is obviously an exceptional circumstance - Therefore, revision is maintainable. [Ramniwas Sharma v. Smt. Jasoda Bai]...691

Specific Relief Act (47 of 1963), Section 9 - See - Vinirdishtha Bhrashta Acharan Nivaran Adhiniyam, M.P. 1982 [Entire chapter VIII from Sections 24 to 32 omitted w.e.f. 31.08.1998], Section 31 [Rameshwarlal v. Dattatraya]...970

Specific Relief Act (47 of 1963), Section 20, Evidence Act, 1872, Section 91 - Suit for specific performance of agreement to sell agricultural land - Suit resisted on the ground that it was a loan transaction - Held - When execution of agreement to sell is admitted then in view of S. 91 of the Evidence Act, the oral evidence about loan transaction can not be taken into consideration to draw any inference contrary to the terms of agreement. [Ammilal v. Kamla Bai] ...243

कथन कर्मचारी की पीठ पीछे अभिलिखित किये गये थे - इसलिए निष्कर्ष दूषित हो जाता है। (राजेश उपाध्याय वि. म.प्र. राज्य) ...844

सेवा विनियम, 2001, धारा 2(i) - देखें - सेवा विधि (बिन्दाप्रसाद वि. नर्मदा मालवा ग्रामीण बैंक) ...833

शासकीय सेवक (अधिवार्षिकी आयु) द्वितीय संशोधन अधिनियम, म.प्र. (1998 का 28), धारा 2 - देखें - सेवा विधि (कीर्ति सक्सेना (डॉ.)(श्रीमति) वि. म.प्र. राज्य) ...368

रुग्ण औद्योगिक कम्पनी (विशेष उपबंध) अधिनियम, 1985 (1986 का 1), धारा 20(1) - रुग्ण कम्पनियों का परिसमापन - सबसे ऊँची बोली स्वीकार नहीं - शासकीय समापक ने रुग्ण उद्योग की आस्तियों के विक्रय के लिए निविदाएँ आमंत्रित कीं - प्रत्यर्थी क्र. 2 ने 8.01 करोड़ रुपये की उच्चतम राशि का कुटेशन दिया जिसे एस.बी.आई. और आई.डी.बी.आई. के साथ-साथ सरकार द्वारा भी अनुमोदित किया गया - उसके बाद अपीलार्थी ने बोली में भाग लेने के लिए अवसर प्रदान करने की प्रार्थना की और 8.05 करोड़ रुपये का प्रस्ताव दिया - अभिनिर्धारित - प्रत्यर्थियों के विरुद्ध कपट या दुरभिसंधि का कोई अभिकथन नहीं - विक्रय की कार्यवाहियाँ लम्बे समय से चल रही थीं किन्तु अपीलार्थी ने शासकीय समापक के समक्ष भाग नहीं लिया - प्रत्यर्थी क्र. 2 की अन्तिम बोली अपीलार्थी द्वारा 4 लाख रुपये की वृद्धि मात्र से अस्वीकार नहीं की जा सकती - उचित समय पर सद्भाविक निविदाकार बनने की बजाए संव्यवहार रोकने हेतु मध्यक्षेप किया गया - आवेदन उचित रूप से नामंजूर - अपील खारिज। (एम्बो एक्सपोर्ट्स लि., कोलकाता वि. श्री ईशर एगो लि.)...820

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 6 - बेदखली के बाद प्रतिवादी ने वादग्रस्त सम्पत्ति पर दो पक्के कमरों का निर्माण किया - अधिनियम की धारा 6 के अन्तर्गत वाद - कब्जे के प्रत्यावर्तन की डिक्री प्रतिवादी को निर्माण हटाने के निदेश के साथ - अभिनिर्धारित - न्यायालय को अधिनियम की धारा 6 के अन्तर्गत किसी वाद में निर्माण हटाने का निदेश देने की कोई शक्ति नहीं है - ऐसा निदेश अपास्त - डिक्री तदनुसार उपांतरित। (रामनिवास शर्मा वि. श्रीमति जशोदा बाई) ...691

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 6, सिविल प्रक्रिया संहिता, 1908, धारा 115 - अधिनियम की धारा 6 के अन्तर्गत विनिश्चय के विरुद्ध अनुतोष - असफल पक्षकार स्वत्व पर आधारित वाद पेश कर सकता है - पुनरीक्षण पेश करने का अनुतोष उपलब्ध है किन्तु वह एक अपवाद के रूप में है - अभिनिर्धारित - वर्तमान मामले में निर्माण हटाने का निदेश जारी किया गया जो एक आपवादिक परिस्थिति है - इसलिए पुनरीक्षण पोषणीय है। (रामनिवास शर्मा वि. श्रीमति जशोदा बाई) ...691

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 9 - देखें - विनिर्दिष्ट भ्रष्ट आचरण निवारण अधिनियम, म.प्र. 1982 [सम्पूर्ण अध्याय 8 धारा 24 से 32 तक तारीख 31.08.1998 से विलोपित], धारा 31 (रामेश्वरलाल वि. दत्तात्रय) ...970

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 20, साक्ष्य अधिनियम, 1872, धारा 91 - कृषि भूमि विक्रय करने के अनुबन्ध के विनिर्दिष्ट पालन का वाद - वाद का विरोध इस आधार पर किया गया कि यह एक ऋण संव्यवहार था - अभिनिर्धारित - जब विक्रय अनुबन्ध का निष्पादन स्वीकार कर लिया जाता है तब साक्ष्य अधिनियम की धारा 91 को दृष्टिगत रखते हुए, अनुबन्ध के निबंधनों के विपरीत कोई अनुमान निकालने के लिए ऋण संव्यवहार के बारे में मौखिक साक्ष्य को विचार में नहीं लिया जा सकता। (अम्मीलाल वि. कमलाबाई) ...243

Specific Relief Act (47 of 1963), Section 20 - Specific performance of contract to sell plots - Equitable relief - Conduct of parties relevant - Defendant had a colonizers licence for developing the colony - After getting permission, he had sold various plots - No evidence that permission is refused to sell plots which were agreed to sell - Conduct of defendant shows that he was not interested in getting the agreements performed and was only interested in getting the agreements cancelled so that he can get enhanced value for the plots - Suit rightly decreed. [Rameshwarlal v. Dattatraya] ...970

Specific Relief Act (47 of 1963), Section 20 - Suit for specific performance of agreement to sell agricultural land - Agreement by one co-owner - Held - One co-owner can sell the land till the extent of his undivided share but subject to consent of the other co-sharers of the property - Suit could not be decreed for specific performance contrary to the interest of other co-Bhumiswami - Plaintiffs also failed to prove readiness & willingness to perform their part of contract - Decree of specific performance cannot be granted. [Ammilal v. Kamla Bai] ...243

Specific Relief Act (47 of 1963), Section 20 - Suit for specific performance of agreement to sell - Held - When it is found that plaintiff was not ready and willing to perform his part of contract then the suit could be decreed for refund of the advance money. [Ammilal v. Kamla Bai] ...243

Specific Relief Act (47 of 1963), Section 20 - Suit for specific performance of contract for sale of certain plots - Defence plea that agreements are executed as a security for loan - Held - Defendant had not made any effort to repay the loan nor had paid any interest on the loan - Defendant obtained colonizers licence and developed a colony - He has sold some plots also - Plea not acceptable. [Rameshwarlal v. Dattatraya]...970

Specific Relief Act (47 of 1963), Section 20 - Suit for specific performance of contract to sell the land on the basis of an oral agreement and a receipt executed by defendant admitting agreement and receiving Rs. 7 lacs as part of consideration - Trial Court directing the refund of consideration of Rs. 7 lacs along with interest - Appeal filed by defendant - Held - There was no reason due to strained relationship to rely upon the defendant for entering into the oral agreement to sell for the purpose of sale of property for consideration of Rs. 11,50,000 - Material contradiction in the version of plaintiff and his witnesses as to the payment of consideration of Rs. 7 lacs - There was overwriting and manipulations in the receipt - Receipt cannot be said to be reliable at all - Judgment & decree set-aside - Appeal allowed. [Shanti Rathore (Smt.) v. Radheshyam] ...932

Specific Relief Act (47 of 1963), Section 34 - See - Civil Procedure Code, 1908, Order 6 Rule 2 & Section 151 [Kanaklata v. Subhadra] ...433

Stamp Act (2 of 1899) [As amended by Stamp (M.P. Amendment)

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 20 — भूखण्ड विक्रय करने की संविदा का विनिर्दिष्ट पालन — साम्यपूर्ण अनुतोष — पक्षकारों का आचरण सुसंगत — प्रतिवादी के पास कॉलोनी विकसित करने के लिए कॉलोनी बसाने का लायसेंस था — अनुज्ञा प्राप्त करने के पश्चात् उसने विभिन्न भूखण्डों का विक्रय किया था — कोई साक्ष्य नहीं कि उन भूखण्डों के विक्रय की अनुज्ञा नामंजूर की गई जिनके विक्रय का करार हुआ था — प्रतिवादी का आचरण दर्शाता है कि करार का पालन करने में उसकी रुचि नहीं थी बल्कि केवल करार रद्द कराने में उसकी रुचि थी ताकि वह भूखण्डों के लिए बढ़ी हुई कीमत पा सके — वाद उचित रूप से डिक्री किया गया। (रामेश्वरलाल वि. दत्तात्रय) ...970

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 20 — कृषि भूमि विक्रय करने के अनुबन्ध के विनिर्दिष्ट पालन का वाद — एक सहस्वामी द्वारा अनुबन्ध — अभिनिर्धारित — एक सहस्वामी उसके अविभाजित हिस्से की सीमा तक भूमि विक्रय कर सकता है किन्तु सम्पत्ति के अन्य सहभागीदारों की सम्पत्ति के अधीन — अन्य सहभूमिस्वामियों के हित के विपरीत विनिर्दिष्ट पालन के लिए वाद डिक्री नहीं किया जा सकता था — वादी संविदा के उनके भाग का पालन करने के लिए तैयार और रजामंद होना साबित करने में भी असफल रहे — विनिर्दिष्ट पालन की डिक्री प्रदान नहीं की जा सकती। (अम्मीलाल वि. कमलाबाई) ...243

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Act, (12 of 2002) w.e.f. 13.08.2002], Schedule 1-A, Article 33 - Constitutional validity - Stamp duty on lease - Document in question is not the one which is covered under List I, Entry 91 of 7th Schedule of Constitution - Entry 44 of IIIrd List of 7th Schedule of Constitution provides for stamp duties other than duties or fees collected by means of judicial stamps - State is competent to prescribe the rates as mentioned in Article 33 of Schedule 1-A of Stamp Act, as amended in Madhya Pradesh - Said Article is not repugnant to S. 105 of T.P. Act or S. 2(16) of Stamp Act. [R.V. Infrastructure Engineers Pvt. Ltd. v. State of MP] ...608

Stamp Act (2 of 1899) [As amended by Stamp (M.P. Amendment) Act, (12 of 2002) w.e.f. 13.08.2002], Schedule 1-A, Article 33(c) - The duty as per rate prevailing on the date of agreement is payable not on the date when Cabinet took the decision and letter of acceptance of offer was issued. [R.V. Infrastructure Engineers Pvt. Ltd. v. State of MP] ...608

Stamp Act (2 of 1899), Section 2(5) - Bond - Explained - Held - There must be an undertaking to pay - The sum should be a sum of money but not necessarily certain - The payment will be to another person named in the instrument - The maker should sign it - The instrument must be attested by a witness and it must not be payable to order or bearer. [Bhismat Pandey v. Phoola] ...95

Stamp Act (2 of 1899), Section 2(5) - Bond - Peculiar features - Held - Positive - It should be attested by a witness - Negative - It must not be payable to order or bearer. [Bhismat Pandey v. Phoola] ...95

Stamp Act (2 of 1899), Section 2(5) & 2(22) - Bond - Promissory Note - Difference - Held - If money payable under the instrument is not certain, it cannot be promissory note, although it can be a bond - If the instrument is not attested by a witness, it cannot be a bond, although it may be a promissory note - If the instrument is payable to order or bearer, it cannot be a bond, but it can be a promissory note. [Bhismat Pandey v. Phoola] ...95

Stamp Act (2 of 1899), Section 2(5) & 2(22) - Promissory note or bond - An agreement for payment of remaining consideration of sale and also attested by two witnesses - Held - All the essential ingredients of bond are found in the document i.e., (a) an undertaking to pay a definite sum of the amount, (b) the payment was to be made to the plaintiff, (c) the maker had signed it, (d) the instrument has been attested by two witnesses and it is not payable to order or bearer - Document is a bond. [Bhismat Pandey v. Phoola] ...95

Stamp Act (2 of 1899), Sections 2(5), 2(22) & 4 - Nature of document - A document has all essential ingredients of promissory note and was not attested by attesting witnesses - Though it was attested by Notary - Notary could not be said to be attesting witness - Document is not a bond but a promissory note. [Ram Kishan Dwivedi v. Rohni Prasad Tiwari] ...123

12) द्वारा तारीख 13.08.2002 से यथासंशोधित], अनुसूची 1-ए, अनुच्छेद 33 - संवैधानिक विधिमान्यता - पट्टे पर स्टाम्प शुल्क - प्रश्नगत दस्तावेज वह नहीं है जो संविधान की 7वीं अनुसूची की सूची I, प्रविष्टि 91 के अन्तर्गत आता है - संविधान की 7वीं अनुसूची की सूची III की प्रविष्टि 44 न्यायिक स्टाम्प के द्वारा संग्रहीत शुल्क या फीस से भिन्न स्टाम्प शुल्क का उपबंध करती है - राज्य, मध्य प्रदेश में यथासंशोधित भारतीय स्टाम्प अधिनियम की अनुसूची 1-ए के अनुच्छेद 33 में उल्लिखित दरें विहित करने के लिए सक्षम हैं - उपर्युक्त अनुच्छेद सम्पत्ति अंतरण अधिनियम की धारा 105 या स्टाम्प अधिनियम की धारा 2(16) के विरुद्ध नहीं है। (आर.व्ही. इन्फ्रास्ट्रक्चर इंजीनियर्स प्रा.लि. वि. म.प्र. राज्य) ...608

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Stamp Act (2 of 1899), Sections 33(1) & 38(2) - Impounding a document - Payment of deficit stamp duty and penalty - Procedure laid down by the Apex Court in Peteti Subba Rao's case [(2002) 10 SCC 427]. [Rachna Khare (Ku.) v. Bachchoo Ram] ...840

Stamp Act (2 of 1899), Section 35; Evidence Act, 1872, Section 65, Constitution, Article 14 - Whether S. 35 of Stamp Act nullifies S. 65 of Evidence Act - There is distinction between instrument and document - Ss. 35 & 36 of Stamp Act are not concerned with any copy or document - S. 65 of Evidence Act deals with secondary evidence relating to documents only - Two provisions are not to be compared - When both the statutes operate in different fields, they cannot be given equal platform - The legislature has made a distinction and said distinction is rational & relevant and does not invite frown of Article 14 of Constitution. [Vijay Choudhary v. Union of India] ...376

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Stamp Act (2 of 1899), Schedule 1-A, Article 5(e)(ii) - Stamp duty payable - Agreement or Memorandum of agreement - Trial Court directed payment of deficit stamp duty on the basis of earnest money paid in the agreement - Held - When possession of property is not given stamp duty shall be @ 1% of total consideration of the property set forth in the agreement - Order not sustainable under law - Order set-aside - Petition allowed. [Rachna Khare (Ku.) v. Bachchoo Ram] ...840

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स्टाम्प अधिनियम (1899 का 2), धारा 2(16) - देखें - सम्पत्ति अन्तरण अधिनियम, 1882, धारा 105, (आर.व्ही. इन्फ्रास्ट्रक्चर इंजीनियर्स प्रा.लि. वि. म.प्र. राज्य) ...608

स्टाम्प अधिनियम (1899 का 2), धारा 2(22) - प्रॉमिसरी नोट - स्पष्ट किया गया - अभिनिर्धारित - संदाय करने का बिना शर्त वचन - रकम धनराशि के रूप में होनी चाहिए और निश्चित होना चाहिए - संदाय किसी ऐसे व्यक्ति के आदेश द्वारा जो निश्चित हो या लिखत के धारक को होना चाहिए - निष्पादक को उसे हस्ताक्षरित करना चाहिए। (बिस्मत पाण्डे वि. फूला) ...95

स्टाम्प अधिनियम (1899 का 2), धाराएँ 33(1) व 38(2) - दस्तावेज परिबद्ध करना - स्टाम्प शुल्क की कमी का भुगतान और शास्ति - उच्चतम न्यायालय द्वारा पतेती सुब्बा राव के मामले [(2002) 10 SCC 427] में प्रक्रिया अधिकृत की गयी। (रचना खरे (कु.) वि. बच्चू राम) ...840

स्टाम्प अधिनियम (1899 का 2), धारा 35, साक्ष्य अधिनियम, 1872, धारा 65, संविधान, अनुच्छेद 14 - क्या स्टाम्प अधिनियम की धारा 35 साक्ष्य अधिनियम की धारा 65 को अकृत करती है - लिखत और दस्तावेज के मध्य विभेद है - स्टाम्प अधिनियम की धाराएँ 35 व 36 किसी प्रतिलिपि या दस्तावेज से सम्बन्धित नहीं हैं - साक्ष्य अधिनियम की धारा 65 केवल दस्तावेजों से सम्बन्धित द्वितीयक साक्ष्य से सम्बद्ध है - दोनों उपबंध तुलना किये जाने योग्य नहीं हैं - जब दोनों कानून भिन्न-भिन्न क्षेत्रों में प्रवर्तित किये जाते हैं, उन्हें एक समान मंच नहीं दिया जा सकता - विधायिका ने विभेद किया है और कथित विभेद विवेकी और सुसंगत है और संविधान के अनुच्छेद 14 के अनुमोदन को आमंत्रित नहीं करता। (विजय चौधरी वि. यूनियन ऑफ इंडिया) ...376

स्टाम्प अधिनियम (1899 का 2), धाराएँ 35 व 38(2) - लिखत सम्यक् रूप से स्टाम्पित नहीं - लिखत को परिबद्ध करने की प्रक्रिया - विवेचना की गयी। (बिस्मत पाण्डे वि. फूला) ...95

स्टाम्प अधिनियम (1899 का 2), अनुसूची 1-ए, अनुच्छेद 5(ई)(ii) - देय स्टाम्प शुल्क - करार या करार का ज्ञापन - विचारण न्यायालय ने करार में अदा किये गये अग्रिम धन के आधार पर स्टाम्प शुल्क में कमी के भुगतान का निदेश दिया - अभिनिर्धारित - जब सम्पत्ति का कब्जा नहीं दिया जाता तब स्टाम्प शुल्क करार में उपवर्णित सम्पत्ति के कुल प्रतिफल का 1 प्रतिशत होगा - आदेश विधि के अन्तर्गत कायम रखे जाने योग्य नहीं - आदेश अपास्त - याचिका मंजूर। (रचना खरे (कु.) वि. बच्चू राम) ...840

उत्तराधिकार अधिनियम (1925 का 39), धारा 63(सी) - देखें - सम्पत्ति अन्तरण अधिनियम, 1882; धारा 3 (राम किशन द्विवेदी वि. रोहनी प्रसाद तिवारी) ...123

स्वतंत्रता संग्राम सैनिक सम्मान निधि नियम, म.प्र. 1972, नियम 3(6) [संशोधित] - नियम, 1972 के नियम 3(6) में किया गया संशोधन अधिकारातीत नहीं है। (शील चंद जैन वि. म.प्र. राज्य) FB...771

स्वतंत्रता संग्राम सैनिक सम्मान निधि नियम, म.प्र. 1972, नियम 3(6) [संशोधित]

3(6) [Amended] - *Benefit of Samman Nidhi from the date of sanction order.* [Sheel Chand Jain v. State of M.P.] FB...771

Swatantrata Sangram Sainik Samman Nidhi Niyam, M.P. 1972, Rule

3(6) [Amended] - *Disposal of application - State is bound to decide complete application in future with promptitude, to say, within one year from the date an application is filed.* [Sheel Chand Jain v. State of M.P.] FB...771

Transfer of Property Act (4 of 1882), Section 3, Succession Act, 1925, Section 63(c) - "attested" - The definition of the word "attested" in S. 63(c) of Succession Act, 1925 and in S. 3 of Transfer of Property Act, 1882 is similar. [Ram Kishan Dwivedi v. Rohni Prasad Tiwari] ...123

Transfer of Property Act (4 of 1882), Section 48 - Priority of rights created by transfer - Purchase made competently vide earlier registered sale deed is to be first protected. [Sunil Kumar v. Dr. Om Prakash Garg] ...960

Transfer of Property Act (4 of 1882), Section 53-A - Part performance - The doctrine of part performance is a weapon of defence - If the defendants are seeking the protection of this doctrine, they are required to discharge all the statutory obligations as provided u/s 53-A - Defendants never sent any notice to the plaintiff to get the sale deed executed in order to prove their readiness & willingness - Defendants have not discharged the statutory obligations - Although defendants are in possession of the suit property, but they are not entitled for protection u/s 53-A. [Anant Singh (Dead) Through L.Rs. Harnam Singh v. Haricharan] ...953

Transfer of Property Act (4 of 1882), Section 54 - Sale - Sale how made - Held - Sale of property less than Rs.100 can be made without there being a registered instrument and the sale can be proved by delivery of possession. [Joge Ram Das Kahar v. Chhotelal Sharma] ...639

Transfer of Property Act (4 of 1882), Section 105 - Lease - Change of purpose - Land allotted on lease for establishment of industry - Petitioner applied for change of purpose of lease for installing of Petrol Pump, establishment of restaurant, Aushadhalaya and departmental store - Held - No condition/covenant in lease deed that lessee would be entitled to ask for change of purpose and lessor would be obliged to change the purpose - Permission rightly rejected - Petition dismissed. [Himgouri Pulses Industrial Area, Harda (M/s.) v. State of M.P.] ...630

Transfer of Property Act (4 of 1882), Section 105 - Lease - Ingredients - (i) There is a transfer of a right to enjoy property, (ii) it is made for a certain time, express or implied or in perpetuity, and (iii) there has to be consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value. [R.V. Infrastructure Engineers Pvt. Ltd. v. State of MP] ...608

— मंजूरी आदेश की तारीख से सम्मान निधि का लाभ। (शील चंद जैन वि. म.प्र. राज्य)FB...771

स्वतंत्रता संग्राम सैनिक सम्मान निधि नियम, म.प्र. 1972, नियम 3(6) [संशोधित]
— आवेदन का निपटारा — राज्य भविष्य में पूर्ण विवरण संहित पेश आवेदन तत्परता के साथ अर्थात् आवेदन पेश करने की तारीख से एक वर्ष के भीतर विनिश्चित करने के लिए आबद्ध है। (शील चंद जैन वि. म.प्र. राज्य) FB...771

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 3, उत्तराधिकार अधिनियम, 1925, धारा 63(सी) — "अनुप्रमाणित" — शब्द "अनुप्रमाणित" की परिभाषा उत्तराधिकार अधिनियम, 1925 में और सम्पत्ति अन्तरण अधिनियम, 1882 में समान है। (राम किशन द्विवेदी वि. रोहनी प्रसाद तिवारी) ...123

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 48 — अन्तरण द्वारा सृष्ट अधिकारों की पूर्विकता — पूर्ववर्ती रजिस्ट्रीकृत विक्रय विलेख द्वारा पूर्ण किया गया क्रय पहले संरक्षित किया जाना चाहिए। (सुनील कुमार वि. डॉ. ओम प्रकाश गर्ग) ...960

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 53-ए — भागिक पालन — भागिक पालन का सिद्धांत प्रतिरक्षा का शस्त्र है — यदि प्रतिवादी इस सिद्धांत का संरक्षण चाह रहे हों तो उन्हें धारा 53-ए के अन्तर्गत उपबंधित सभी कानूनी बाध्यताओं का पालन करना आवश्यक है — प्रतिवादियों ने अपनी तैयारी और रजामंदी साबित करने के लिए विक्रय विलेख निष्पादित कराने के लिए वादी को कभी कोई सूचना पत्र नहीं भेजा — प्रतिवादियों ने कानूनी बाध्यताओं का पालन नहीं किया — यद्यपि प्रतिवादी वादग्रस्त सम्पत्ति के कब्जे में हैं, परन्तु वे धारा 53-ए के अंतर्गत संरक्षण के हकदार नहीं हैं। (अनंत सिंह (मृतक) द्वारा विधिक प्रतिनिधि हरनाम सिंह वि. हरिचरण) ...953

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 54 — विक्रय — विक्रय कैसे किया जाता है — अभिनिर्धारित — 100 रुपये से कम की सम्पत्ति का विक्रय रजिस्ट्रीकृत विलेख के बिना किया जा सकता है और कब्जे के परिदान द्वारा विक्रय साबित किया जा सकता है। (जोगे रामदास कहार वि. छोटेलाल शर्मा) ...639

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 105 — पट्टा — प्रयोजन का परिवर्तन — भूमि उद्योग स्थापित करने के लिए पट्टे पर आवंटित की गई थी — याची ने पेट्रोल पम्प, रेस्टोरेण्ट, औषधालय और डिपार्टमेंटल स्टोर की स्थापना के लिए पट्टे का प्रयोजन परिवर्तित करने के लिए आवेदन दिया — अभिनिर्धारित — पट्टा विलेख में कोई शर्त/प्रसंगिकता नहीं कि पट्टेदार प्रयोजन परिवर्तित करने की माँग करने का हकदार होगा और पट्टादाता प्रयोजन परिवर्तित करने के लिए बाध्य होगा — अनुमति उचित रूप से नामंजूर की गयी — याचिका खारिज। (हिमगौरी पल्सेस इन्डस्ट्रियल एरिया, हरदा (मे.) वि. म.प्र. राज्य) ...630

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 105 — पट्टा — अवयव — (i) सम्पत्ति का उपभोग करने के अधिकार का अन्तरण हो, (ii) यह एक अभिव्यक्त या विवक्षित समय के लिए या शाश्वत काल के लिए किया गया हो, और (iii) किसी कीमत के, जो दी गई हो या जिसे देने का वचन दिया गया हो, अथवा धन या फसलों के अंश या सेवा या किसी अन्य मूल्यवान वस्तु के प्रतिफल के रूप में होना चाहिए। (आर.व्ही. इन्फ्रास्ट्रक्चर इंजीनियर्स प्रा.लि. वि. म.प्र. राज्य) ...608

Transfer of Property Act (4 of 1882), Section 105, Stamp Act, 1899, Section 2(16) - Lease - Right to collect tolls for fifteen years in lieu of the amount spent by the Concessionaire in the construction of roads, bridges etc. under the Build, Operate and Transfer (B.O.T.) scheme - Right to enjoy property clearly makes the transaction that of lease - Mere apprehension that there may not be successful completion will not come in the way of chargeability of the document - Since construction of road, handing over of possession, as well as recovery of toll is provided hence the document falls within the definition of lease. [R.V. Infrastructure Engineers Pvt. Ltd. v. State of MP]
...608

Transfer of Property Act (4 of 1882), Section 106 - Requirement of notice - When the period of lease is fixed by a contract and it comes to an end then the tenant is not entitled to a notice u/s 106 of the Act - After expiry of the period of termination of lease the possession of the lessee was that of a tenant-at-sufferance as being one who came in by right and held over without right - Such a person can be evicted without notice. [Balvant Rai Agrawal v. Bharat Petroleum Corporation]
...646

Transfer of Property Act (4 of 1882), Section 107, Registration Act, 1908, Section 17 - Lease for 10 years - Lease cannot be renewed automatically - Renewal for a period of 10 years will become admissible only when the renewal is made by a registered lease deed as laid down u/s 17 of the Registration Act r/w S. 107 of T.P. Act. [Balvant Rai Agrawal v. Bharat Petroleum Corporation]
...646

Transfer of Property Act (4 of 1882), Section 111(a) - Determination of lease - Original period of lease extended for 10 years, thereafter, lease not renewed in terms of agreement - Suit for ejectment - Alternate plea of continuation of lease in plaint by lessor - Held - Contract of lease came to an end and lease was determined by efflux of time limited thereby - An admission made as alternate plea regarding renewal of lease cannot overrule statutory provision and lease period can not be said to be renewed - Lessor has right to eject lessee - Appeal allowed. [Balvant Rai Agrawal v. Bharat Petroleum Corporation]
...646

Transfer of Property Act Gwalior State Samvat 2001, Section 119, Qanoon Registry, Riyasat Gwalior Samvat 1971, Section 9 - Suit for restoration of possession on the basis of title alleged to have been acquired by virtue of written permission by Ex-Zamindar - Written permission to make construction coupled with right to sell/mortgage to the grantee and his generation to generation - It should be treated as a gift in absence of consideration - The document was required to be registered - For want of registration plaintiff did not acquire any title - Since suit is based on title alleged to be acquired by the said document - The document can not be

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 105, स्टाम्प अधिनियम, 1899, धारा 2(16) - पट्टा - निर्माण, प्रवर्तन और अंतरण (बी.ओ.टी.) स्कीम के अधीन रियायत पाने वाले द्वारा सड़क, पुल आदि के निर्माण में खर्च की गई रकम के बदले में पन्द्रह वर्ष तक पथकर संग्रह का अधिकार - सम्पत्ति का उपभोग करने का अधिकार स्पष्ट रूप से संव्यवहार को पट्टे का संव्यवहार बनाता है - केवल यह आशंका कि सफलतापूर्ण समापन नहीं हो सकेगा दस्तावेज की प्रभार्यता के मार्ग में बाधक नहीं होगी - चूंकि सड़क का निर्माण, कब्जे की सुपुर्दगी साथ ही पथकर की वसूली का उपबंध है इसलिए दस्तावेज पट्टे की परिभाषा में आयेगा। (आर.व्ही. इन्फ्रास्ट्रक्चर इंजीनियर्स प्रा.लि. वि. म.प्र. राज्य) ...608

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 106 - सूचना पत्र की आवश्यकता - जब पट्टे की कालावधि संविदा द्वारा नियत की गयी हो और वह समाप्त हो जाती है तब किरायेदार अधिनियम की धारा 108 के अन्तर्गत सूचना पत्र का हकदार नहीं है - पट्टे के अवसान की कालावधि की समाप्ति के बाद पट्टेदार का कब्जा मूक सम्पत्ति से किरायेदार के समान होता है जो अधिकार द्वारा आया और बिना अधिकार के रुका हुआ है - ऐसा व्यक्ति बिना सूचना के बेदखल किया जा सकता है। (बलवंतराय अग्रवाल वि. भारत पेट्रोलियम, कारपोरेशन) ...646

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 107, रजिस्ट्रीकरण अधिनियम, 1908, धारा 17 - पट्टा 10 वर्ष के लिए - पट्टा स्वतः नवीकृत नहीं हो सकता - 10 वर्ष की कालावधि के लिए नवीनीकरण केवल तब ग्राह्य होगा जब नवीनीकरण धारा 17 रजिस्ट्रीकरण अधिनियम सहपठित धारा 107 सम्पत्ति अंतरण अधिनियम के अन्तर्गत रजिस्ट्रीकृत पट्टा विलेख द्वारा किया गया हो। (बलवंतराय अग्रवाल वि. भारत पेट्रोलियम, कारपोरेशन) ...646

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 111(ए) - पट्टे का पर्यवसान - पट्टे की मूल कालावधि 10 वर्ष के लिए बढ़ायी गयी, उसके बाद करार के निबंधनों के अनुसार पट्टे का नवीनीकरण नहीं किया गया - बेदखली के लिए वाद - पट्टाकर्ता द्वारा वादपत्र में पट्टा जारी रहने का वैकल्पिक अभिवचन - अभिनिर्धारित - पट्टे की संविदा समाप्त हो गयी और उसके द्वारा सीमित समय के बीत जाने पर पट्टे का पर्यवसान हो गया - पट्टे के नवीनीकरण के सम्बन्ध में किये गये वैकल्पिक अभिवचन के रूप में की गयी स्वीकृति कानूनी उपबंध को रद्द नहीं कर सकती और पट्टे की कालावधि नवीकृत हुई नहीं कही जा सकती - पट्टाकर्ता को पट्टेदार को बेदखल करने का अधिकार है - अपील मंजूर। (बलवंतराय अग्रवाल वि. भारत पेट्रोलियम, कारपोरेशन) ...646

सम्पत्ति अंतरण अधिनियम ग्वालियर स्टेट संवत् 2001, धारा 119, कानून रजिस्ट्री, रियासत ग्वालियर संवत् 1971, धारा 9 - पूर्व जमींदार की लिखित अनुमति के आधार पर कथित रूप से अर्जित किये गये स्वत्व के आधार पर कब्जे के प्रत्यावर्तन के लिए वाद - प्राप्तिकर्ता और उसकी पीढ़ी दर पीढ़ी को विक्रय/बंधक करने के अधिकार से युक्त निर्माण करने के लिए लिखित अनुमति - प्रतिफल के अभाव में इसे दान माना जाना चाहिए - दस्तावेज रजिस्ट्रीकृत होना आवश्यक था - रजिस्ट्रीकरण के अभाव में वादी ने कोई स्वत्व अर्जित नहीं किया - चूंकि वाद उक्त दस्तावेज के द्वारा कथित रूप से अर्जित स्वत्व पर आधारित है - आनुषंगिक प्रयोजनों के लिए दस्तावेज पर विचार नहीं किया जा सकता - वाद खारिज - अपील मंजूर। (सावित्री बाई वि. कृष्ण मोरारी (मृतक) द्वारा विधिक प्रतिनिधि) ...956

looked into for collateral purpose - Suit dismissed - Appeal allowed. [Savitribai v. Krishna Morari (Dead) Through L.R.] ...956

Vaniyyik Kar Adhiniyam, M.P. 1994 (5 of 1995), Section 51 - Transfer to defraud revenue void - Provision provides protection to creditors in whose favour the property has been alienated or in whose favour charges over property has been created - Section not ultra vires - Petition dismissed. [Kotak Mahindra Bank Ltd. v. State of M.P.] ...918

Vaniyyik Kar Adhiniyam, M.P. 1994 (5 of 1995), Section 53 - S. 53 creates a statutory first charge which prevails over any charge on the property - Words "subject to provisions of Section 530 of the Companies Act" mean that remainder property shall be distributed in accordance with S. 530 of Companies Act - S. 530 of Companies Act is to be read in addendum of S. 53 of Adhiniyam 1994 - Section 53 of Adhiniyam 1994 not ultra vires - Petition dismissed. [Kotak Mahindra Bank Ltd. v. State of M.P.] ...918

Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, M.P. 1982 [Entire chapter VIII from Sections 24 to 32 omitted w.e.f. 31.08.1998], Sections 24 to 32 - Effect of omission on pending proceedings - Events and changes in the law occurring during the pendency of an appeal are required to be taken into consideration in order to do complete justice between parties - So that a futile decree may not be passed - It should be so moulded as to accord with the changed statutory situation. [Rameshwarlal v. Dattatraya] ...970

Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, M.P. 1982 [Entire chapter VIII from Sections 24 to 32 omitted w.e.f. 31.08.1998], Sections 24 to 32 - W.e.f. 31.08.98, the entire chapter VIII, containing Sections 24 to 32 has become redundant - Judgment & decree was passed on 25.02.99, therefore, these provisions of Adhiniyam were not required to be complied with. [Rameshwarlal v. Dattatraya] ...970

Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, M.P. 1982 [Entire chapter VIII from Sections 24 to 32 omitted w.e.f. 31.08.1998], Section 31, Specific Relief Act, 1963, Section 9, Contract Act, 1872, Section 23 - Defendant entered into an agreement for sale of plots and received earnest money - A suit for specific performance of contract - Defence plea that agreement is void, therefore, cannot be enforced - Held - 'No decree can be granted for enforcement of a void agreement' cannot be accepted as a universal principle - A decree for specific performance can be granted, when illegality or breach of law can be made good or cured by certain subsequent action, like obtaining permission or sanction or approval from the competent authority as envisaged under the statutory provision. [Rameshwarlal v. Dattatraya] ...970

Vishwavidyalaya Adhiniyam, M.P. 1973, Statute 28(1)(d), College Code (Statute 28) - See - Service Law [Kirti Saxena (Dr.)(Smt.) v. State of M.P.] ...368

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), धारा 51 — राजस्व से कपट-वंचित करने के लिए किया गया अंतरण शून्य — उपबंध उन लेनदारों के लिए संरक्षण का उपबंध करता है जिसके पक्ष में सम्पत्ति अन्यसंक्रामण की गयी है या जिसके पक्ष में सम्पत्ति पर भार सृष्ट किया गया है — धारा अधिकारातीत नहीं — याचिका खारिज। (कोटक महिन्द्रा बैंक लि. वि. म.प्र. राज्य) ...918

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), धारा 53 — धारा 53 कानूनी प्रथम भार सृष्ट करती है जो सम्पत्ति पर अन्य किसी भार पर अभिमावी होता है — "कम्पनी अधिनियम की धारा 530 के उपबंधों के अध्यक्षीन" शब्द का अर्थ है कि शेष सम्पत्ति कम्पनी अधिनियम की धारा 530 के अनुसार वितरित की जायेगी — कम्पनी अधिनियम की धारा 530 को अधिनियम 1994 की धारा 53 के अनुशेष के रूप में पढ़ा जाना चाहिए — अधिनियम 1994 की धारा 53 अधिकारातीत नहीं — याचिका खारिज। (कोटक महिन्द्रा बैंक लि. वि. म.प्र. राज्य) ...918

विनिर्दिष्ट भ्रष्ट आचरण निवारण अधिनियम, म.प्र. 1982 [सम्पूर्ण अध्याय 8 धारा 24 से 32 तक तारीख 31.08.1998 से विलोपित], धाराएँ 24 से 32 — लम्बित कार्यवाहियों पर लोप का प्रभाव — पक्षकारों के मध्य पूर्ण न्याय करने के लिए अपील लम्बित रहने के दौरान घटित घटनाओं और विधि में हुए परिवर्तनों को विचार में लिया जाना आवश्यक है — ताकि व्यर्थ डिक्री पारित न हो सके — उसे इस प्रकार ढालना चाहिए कि वह परिवर्तित कानूनी परिस्थिति के अनुकूल हो। (रामेश्वरलाल वि. दत्तात्रय) ...970

विनिर्दिष्ट भ्रष्ट आचरण निवारण अधिनियम, म.प्र. 1982 [सम्पूर्ण अध्याय 8 धारा 24 से 32 तक तारीख 31.08.1998 से विलोपित], धाराएँ 24 से 32 — 31.08.98 से धारा 24 से 32 को अन्तर्विष्ट करने वाला सम्पूर्ण अध्याय 8 व्यर्थ हो गया है — निर्णय और डिक्री 25.02.99 को पारित की गई इसलिए अधिनियम के इन उपबंधों का अनुपालन करना आवश्यक नहीं था। (रामेश्वरलाल वि. दत्तात्रय) ...970

विनिर्दिष्ट भ्रष्ट आचरण निवारण अधिनियम, म.प्र. 1982 [सम्पूर्ण अध्याय 8 धारा 24 से 32 तक तारीख 31.08.1998 से विलोपित], धारा 31, विनिर्दिष्ट अनुतोष अधिनियम, 1963, धारा 9, संविदा अधिनियम, 1872, धारा 23 — प्रतिवादी ने मूखण्डों के विक्रय के लिए करार किया और अग्रिम धनराशि प्राप्त की — संविदा के विनिर्दिष्ट पालन के लिए वाद — प्रतिरक्षा अभिवचन कि करार शून्य है, इसलिए प्रवर्तित नहीं किया जा सकता — अभिनिर्धारित — 'शून्य करार के प्रवर्तन हेतु कोई डिक्री प्रदान नहीं की जा सकती' को सर्वव्यापी सिद्धांत के रूप में स्वीकार नहीं किया जा सकता — विनिर्दिष्ट पालन के लिए डिक्री तब प्रदान की जा सकती है जब अवैधता या विधि के उल्लंघन की प्रतिपूर्ति या सुधार कतिपय पश्चात्पूर्ति कार्यवाही द्वारा किया जा सकता है जैसे कि सक्षम प्राधिकारी से अनुज्ञा या मंजूरी या अनुमोदन अभिप्राप्त करना जैसा कि कानूनी उपबंध के अन्तर्गत परिकल्पित है। (रामेश्वरलाल वि. दत्तात्रय) ...970

विश्वविद्यालय अधिनियम, म.प्र. 1973, स्टैच्यूट 28(1)(डी), कॉलेज कोड (स्टैच्यूट 28) — देखें — सेवा विधि — (कीर्ति सक्सेना (डॉ.)(श्रीमति) वि. म.प्र. राज्य) ...368

WORDS & PHRASES :

Aadhath - Meaning - A commission received by a dealer or a commission agent in the business of grains - The word 'Aadhath' does not mean anything less than or more than a commission. [Sales Tax Commissioner v. M/s. Pannalal Narendar Kumar, Jabalpur] ...725

Aadhathiya - Meaning - A person, who receives goods either on his own behalf or on behalf of the principal, sells the same in the market on basis of certain commission - An Aadhatiya may sell or even purchase the goods under the instructions of the principal. [Sales Tax Commissioner v. M/s. Pannalal Narendar Kumar, Jabalpur] ...725

Forthwith - Means within a reasonable time. [Nagar Palika Parishad, Balaghat v. Rajesh Bhoj] ...185

Kachha Aadhatiya - Meaning - Kachha Aadhatiya is a person who is to abide by all the instructions issued by the principal and he is not entitled to take any decision on his own behalf. [Sales Tax Commissioner v. M/s. Pannalal Narendar Kumar, Jabalpur] ...725

Pakka Aadhatiya - Meaning - A 'Pakka Aadhatiya' is person, who receives the goods, keep with him and under the instructions of the principal is to dispose of the same but he could dispose of the goods on his own terms - Pakka Aadhatiya in fact agrees with the principal that he would pay a particular amount for the consignment. [Sales Tax Commissioner v. M/s. Pannalal Narendar Kumar, Jabalpur] ...725

Remedy - When a statute provides for a particular remedy, then appropriate action should be taken there under and as such prosecution of applicants seems to be patently illegal. [Ummed Singh v. State of M.P.]...530

Workmen's Compensation Act (8 of 1923); Section 4 - Onus - Deceased was employed as driver of tractor owned by father - Commissioner on the basis of positive evidence led on behalf of the claimant regarding the deceased being in the employment of father awarded compensation - Held - The onus was thus on the insurance company to have proved the fact that deceased was not in the employment of father - No evidence brought on record to that effect - A presumption can not be drawn that the son could not have been in the employment of his father - Appeal dismissed. [Oriental Insurance Co. Ltd. v. Krishna Devi] ...992

शब्द और वाक्यांश :

आदत — अर्थ — कमीशन जो किसी व्यापारी या कमीशन अभिकर्ता द्वारा अनाज के कारोबार में प्राप्त किया जाता है — शब्द 'आदत' का अर्थ कमीशन से कम या अधिक कुछ नहीं है। (सेल्स टेक्स कमिश्नर वि. मे. पन्नालाल नरेन्द्र कुमार, जबलपुर) ...725

आदतिया — अर्थ — कोई व्यक्ति, या तो स्वयं की ओर से या मालिक की ओर से माल प्राप्त करता है, कतिपय कमीशन पर उसे बाजार में बेचता है — आदतिया मालिक के अनुदेशों के अन्तर्गत माल विक्रय या क्रय कर सकता है। (सेल्स टेक्स कमिश्नर वि. मे. पन्नालाल नरेन्द्र कुमार, जबलपुर) ...725

तत्काल — अर्थ है युक्तियुक्त समय के भीतर। (नगरपालिका परिषद, बालाघाट वि. राजेश भोज) ...185

कच्चा आदतिया — अर्थ — कच्चा आदतिया वह व्यक्ति है जो मालिक द्वारा जारी किये गये सभी अनुदेशों से पाबंद है और वह स्वयं अपनी ओर से कोई निर्णय लेने का हकदार नहीं है। (सेल्स टेक्स कमिश्नर वि. मे. पन्नालाल नरेन्द्र कुमार, जबलपुर) ...725

पक्का आदतिया — अर्थ — पक्का आदतिया वह व्यक्ति है जो माल प्राप्त करता है, उसे अपने पास रखता है और मालिक के अनुदेशों के अन्तर्गत उसका व्ययन करता है किन्तु वह स्वयं अपने निबंधनों पर माल का व्ययन कर सकता है — पक्का आदतिया वास्तव में मालिक से सहमत होता है कि वह प्रेषित माल के लिए विशिष्ट धनराशि अदा करेगा। (सेल्स टेक्स कमिश्नर वि. मे. पन्नालाल नरेन्द्र कुमार, जबलपुर) ...725

उपचार — जब कोई कानून किसी विशिष्ट उपचार का उपबंध करता है, तब उसी के अन्तर्गत समुचित कार्यवाही की जानी चाहिए और इस रूप में आवेदकों का अभियोजन प्रत्यक्षतः अवैध प्रतीत होता है। (उम्मेद सिंह वि. म.प्र. राज्य) ...530

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 4 — भार — मृतक पिता के स्वामित्व के ट्रेक्टर पर चालक के रूप में नियोजित था — मृतक पिता के नियोजन में था इस सम्बन्ध में दावेदार की ओर से पेश सकारात्मक साक्ष्य के आधार पर आयुक्त ने प्रतिकर अधिनिर्णीत किया — अभिनिर्धारित — ऐसी स्थिति में बीमा कम्पनी पर यह भार था कि इस तथ्य को साबित करे कि मृतक पिता के नियोजन में नहीं था — तदर्थक कोई साक्ष्य अभिलेख पर नहीं लायी गयी — यह उपधारणा नहीं की जा सकती कि पुत्र अपने पिता के नियोजन में नहीं हो सकता था — अपील खारिज। (ओरियन्टल इश्योरेंस कं. लि. वि. कृष्णा देवी) ...992

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urea have been upgraded and amended; besides certain bills receipts of sale have also been filed to indicate his bona-fides but they are not very legible to hold that proper rates are being levied by the applicant. Counsel for the applicant has urged that he was willing to cooperate with the investigating agency as and when required, but arresting him would lead to loss of face and social ostracism. And hence giving the applicant the benefit of doubt the application is allowed.

9. It is directed that in the event of arrest, the applicant Hariom shall be released on bail for the period of 30 days (thirty days) upon his furnishing personal bond to the tune of Rs. 25,000/- (Rupees Twenty five thousand only) with one surety in the like amount to the satisfaction of the Arresting Officer for his further appearance as and when directed.

The applicant shall apply for regular bail within the aforesaid period of 30 days which shall be dealt by the trial Court in accordance with law.

It is also directed that the applicant shall abide by all the conditions enumerated under Section 437(3) of the Cr.P.C.

C.c.as per Rules.

Order accordingly.

I.L.R. [2010] M. P., 769

SUPREME COURT OF INDIA

Before Mr. Justice Markandey Katju & Mr. Justice R.M. Lodha

14 January, 2010*

VA TECH ESCHER WYASS FLOVEL LTD.

Vs.

M.P.S.E. BOARD & anr.

... Appellant

... Respondents

A. Arbitration and Conciliation Act (26 of 1996), Section 9 - Scope
- *The Act only applies where there is an arbitration clause, but it does not apply where there is none - The Act covers all kind of disputes including the dispute relating to works contract.* (Para 5)

क. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 9 - विस्तार - अधिनियम केवल वहाँ लागू होता है जहाँ माध्यस्थम् खंड है, परन्तु यह वहाँ लागू नहीं होता जहाँ कुछ नहीं है - अधिनियम में संकर्म संविदा सम्बंधी विवाद सहित सभी प्रकार के विवाद अंतर्विष्ट हैं।

B. Arbitration and Conciliation Act (26 of 1996), Section 9, Madhyastham Adhikaran Adhiniyam, M.P. 1983, Section 7(1) - Scope
- *The 1983 Act and the 1996 Act can be harmonised by holding that the 1983 Act only applies where there is no arbitration clause but it stands impliedly repealed by the 1996 Act where there is an arbitration clause - Dispute relating*

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to works contract and agreement contains arbitration clause - Application u/s 9 of 1996 Act was maintainable. (Paras 6 & 7)

ख. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 9, माध्यस्थम् अधिकरण अधिनियम, म.प्र. 1983, धारा 7(1) — विस्तार — यह अभिनिर्धारित करते हुए अधिनियम 1983 और अधिनियम 1996 एकीभूत किये जा सकते हैं कि अधिनियम 1983 केवल वहाँ लागू होगा जहाँ कोई माध्यस्थम् खंड नहीं है, किन्तु जहाँ माध्यस्थम् खंड है वहाँ अधिनियम 1983 अधिनियम 1996 द्वारा विवक्षित रूप से निरसित हो गया है — संकर्म संविदा सम्बन्धी विवाद और करार में माध्यस्थम् खंड अंतर्विष्ट — अधिनियम 1996 की धारा 9 के अन्तर्गत आवेदन पोषणीय।

ORDER

Heard learned counsel for the parties.

1. This Appeal has been filed against the impugned judgment of the High Court of Madhya Pradesh dated 05th March, 2003.
2. It appears that the appellant was awarded a work contract by the respondents. There was some dispute between the parties and there is an arbitration clause in the agreement.
3. Appellant filed an application under Section 9 of the Arbitration & Conciliation Act, 1996 (for short 'the 1996 Act') which was rejected by the learned Additional District Judge and that order has been upheld by the High Court. Hence, this appeal.
4. Section 7(1) of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (for short 'the 1983 Act') provides as follows:

"7. Reference to Tribunal (1) Either party to a works contract shall irrespective of the fact whether the agreement contains an arbitration clause or not, refer in writing the dispute to the Tribunal."

5. Subsequently, the Parliament enacted the 1996 Act. The 1996 Act only applies where there is an arbitration clause but it does not apply where there is none. The 1996 Act covers all kinds of disputes including the dispute relating to work contracts.
6. In our opinion, the 1983 Act and the 1996 Act can be harmonised by holding that the 1983 Act only applies where there is no arbitration clause but it stands impliedly repealed by the 1996 Act where there is an arbitration clause. We hold accordingly.
7. Hence, the impugned judgment cannot be sustained and we hold that the application under section 9 of the 1996 Act was maintainable.
8. The Appeal is allowed accordingly. No costs.

— Civil Appeal No.3747 of 2005

9. In view of our order passed today in Civil Appeal No.3746 of 2005, this appeal is also allowed on the same terms. No costs.

Appeal allowed.

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FULL BENCH*Before Mr. Justice R.S. Garg, Mr. Justice Arun Mishra, Mr. Justice K.K. Lahoti, Mr. Justice Ajit Singh & Mr. Justice Rajendra Menon*

15 March, 2010*

SHEEL CHAND JAIN

... Petitioner

Vs.

STATE OF M.P. & anr.

... Respondents

A. Swatantrata Sangram Sainik Samman Nidhi Niyam, M.P. 1972, Rule 3(6) [Amended] - Amendment made in Rule 3(6) of Niyam, 1972 is not ultra vires. (Para 16)

क. स्वतंत्रता संग्राम सैनिक सम्मान निधि नियम, म.प्र. 1972, नियम 3(6) [संशोधित] - नियम, 1972 के नियम 3(6) में किया गया संशोधन अधिकारातीत नहीं है।

B. Swatantrata Sangram Sainik Samman Nidhi Niyam, M.P. 1972, Rule 3(6) [Amended] - Benefit of Samman Nidhi from the date of sanction order -

Majority view (Mr. Justice Arun Mishra). - Date of sanction order would also mean the date on which order is passed by the State Government rejecting the complete application in a case where such an order is set-aside by the Court holding that Swatantrata Sangram Sainani would be entitled for Samman Nidhi. (Para 16)

Minority View (Mr. Justice Ajit Singh). - Date of sanction order would not mean the date of the order passed by the State Government rejecting the application when such order is set-aside by the High Court holding the person concerned entitled for Samman Nidhi.

ख. स्वतंत्रता संग्राम सैनिक सम्मान निधि नियम, म.प्र. 1972, नियम 3(6) [संशोधित] - मंजूरी आदेश की तारीख से सम्मान निधि का लाभ -

बहुमत दृष्टिकोण (न्यायमूर्ति श्री अरुण मिश्रा). - मंजूरी आदेश की तारीख का अर्थ उस तारीख से भी होगा जिस पर राज्य सरकार द्वारा किसी मामले में पूर्ण विवरण सहित पेश आवेदन नामंजूर करते हुए आदेश पारित किया गया हो और जहाँ न्यायालय द्वारा यह अभिनिर्धारित करते हुए आदेश अपास्त किया गया हो कि स्वतंत्रता संग्राम सैनानी सम्मान निधि का हकदार होगा।

अल्पमत दृष्टिकोण (न्यायमूर्ति श्री अजीत सिंह). - मंजूरी आदेश की तारीख का अर्थ उस तारीख से नहीं होगा जब राज्य सरकार द्वारा आवेदन नामंजूर करते हुए आदेश पारित किया गया हो और जहाँ उच्च न्यायालय द्वारा यह अभिनिर्धारित करते हुए आदेश अपास्त किया गया हो कि सम्बद्ध व्यक्ति सम्मान निधि पाने का हकदार है।

C. Swatantrata Sangram Sainik Samman Nidhi Niyam, M.P. 1972,

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Rule 3(6) [Amended] - Disposal of application - State is bound to decide complete application in future with promptitude, to say, within one year from the date an application is filed. (Para 16)

ग. स्वतंत्रता संग्राम सैनिक सम्मान निधि नियम, म.प्र. 1972, नियम 3(6) [संशोधित] - आवेदन का निपटारा - राज्य भविष्य में पूर्ण विवरण सहित पेश आवेदन तत्परता के साथ अर्थात् आवेदन पेश करने की तारीख से एक वर्ष के भीतर विनिश्चित करने के लिए आबद्ध है।

Cases referred :

2001(1) J.L.J. 327 = 2001(3) MPHT 81, 2000(1) MPLJ 130, AIR 1993 SC 2127, (2003) 3 SCC 183, (2001) 8 SCC 8, AIR 1944 PC 35, AIR 1965 SC 639, AIR 1970 SC 488, (1980) 4 SCC 443, (1987) 1 All ER 20, (2003) 8 SCC 334, (2005) 3 SCC 551, (2008) 9 SCC 527, AIR 1978 SC 1601, AIR 1986 SC 1, 6 HLCas 443, 6 Rep. 52 b., (2000) 3 SCC 440, (2000) 7 SCC 210, (2001) 8 SCC 179, AIR 1971 SC 761, (1978) 2 All ER 800, AIR 1975 SC 1409, (1997) 10 SCC 289, (2007) 9 SCC 525, AIR 2004 SC 2484, AIR 2007 SC 3014, AIR 1965 SC 1595, AIR 1993 SC 412.

R.K. Samaiya, for the petitioner.

Prashant Singh, Addl.A.G., for the respondents.

ORDER

The Order of the Court was delivered by **ARUN MISHRA, J.** :- The Division Bench has made the reference to the Larger Bench opining that Rule 3(6) of M.P. Swatantrata Sangram Sainik Samman Nidhi Niyam, 1972 (hereinafter referred to as "the Rules") requires to be read down so as to make it a valid piece of legislation.

2. Rule 3(6) of the Rules provides as under :-

"3(6) Freedom fighter will be entitled to claim the benefits of *samman nidhi* from the date of passing the order.

This amendment shall come into force from the date of commencement of the said Rules."

The petitioner has assailed the constitutional validity of the aforesaid rule being discriminatory, unreasonable and irrational. Petitioner claimed Freedom Fighter's Pension. While the matter was pending, the amendment was brought in the Rule 3(6) on 8th March, 1999 stipulating that Freedom Fighters would be entitled for Samman Nidhi from the date of passing of the order. The petitioner assailed the aforesaid rule as ultra vires.

3. Before the Division Bench, it was submitted that even if a Court has passed the order of reversal of the order passed by the State Govt., the benefit can be granted from the date of amendment and not prior to that. The Division Bench opined that if the order of reversal is quashed by this Court and privilege of

"*Samman Nidhi*" is conferred on the applicant, then the order of reversal would be deemed to have been set aside by the order of grant of *Samman Nidhi* and a metamorphosis takes place. Doctrine of relation back has to be given full play. It was opined in view of Full Bench decision of this Court in *Jagannath Prasad vs. The State of M.P.* 2001 (1) J.L.J. 327 that the Court can not grant pension before the amended date even if it comes to hold that the order of refusal is absolutely bad in law. Division Bench further opined that "we think of upholding the provision by reading down as has been expressed in the order, but could not do so in view of the decision rendered in case of *State of M.P. and another vs. Anand bihari and another* 2000 (1) M.P.L.J. 130 and *Jagannath Prasad vs. The State of M.P.* (supra)". The matter has been referred to the Larger Bench as the Division Bench opined that the matter should be considered by a Larger Bench even for the purpose of reading down the provision.

Yet another question was posed before the Division Bench with respect to the validity of the rule. If the State Govt. sits over the matter as long as it chooses, the Division Bench opined that the order should be passed within a reasonable period of time from the date of filing of the application, and the reasonable period as presently advised should be one year.

4. On the basis of aforesaid reference, following questions have been framed for determination :-

"1. Whether the amendment made in Rule 3(6) of M.P. Swatantrata Sangram Sainik Samman Nidhi Niyam, 1972 vide notification dated 8.2.1999 is a valid piece of legislation ?

2. What shall be the meaning of the words "sanction order" स्वीकृति आदेश looking to the intention of the legislature behind enacting 1972 Rules and the amendment in the same, the term "sanction order" would also mean the date on which order is passed by State Government rejecting the application in a case where such an order is set aside by higher forum holding that Swatantrata Sangram Senani would be entitled for pension ?"

5. We have heard Shri R.K. Samaiya, learned counsel appearing for the petitioner and Shri Prashant Singh, learned Addl. Advocate General appearing for the State.

6. Shri R.K. Samaiya, learned counsel appearing for petitioner has submitted that Rule 3(6) of the Rules deserves to be declared as *ultra vires*. He has relied upon decision of Apex Court in *Mukund Lal Bhandari and others vs. Union of India and others* AIR 1993 SC 2127 to contend that it was not open to the State Govt. to frame the aforesaid rule contrary to the mandate of the Apex Court. He has also submitted that State cannot be permitted to sit over the matter and then grant *Samman Nidhi* from the date of sanction order, it is bound to pass the order

within reasonable time. He has also submitted that in case order is set aside by the Court and decision is taken to grant *Samman Nidhi*, the same should relate back to the date on which the order of refusal to grant *Samman Nidhi* was passed.

7. Shri Prashant Singh, learned Addl. AG appearing for the respondents/State relied upon decision of Apex Court in *State of M.P. and another vs. Devkinandan Maheshwari* (2003) 3 SCC 183 in which decision of this Court in *Anand bihari and Jagannath Prasad* (supra) have been approved and decision in *Mukund Lal Bhandari* (supra) has been distinguished. The Apex Court has opined that *Samman Nidhi* is payable from the date of the order under Rule 3(6) of the Rules. He has further submitted that even if the Court sets aside the order of refusal to grant *Samman Nidhi*, the same would be payable with effect from the date when State passes the formal order of grant of *Samman Nidhi*, the benefit would be available from that date. The rule cannot be said to be *ultra vires*. State is free to pass the order whenever the application is completed, there is no limitation prescribed under the rules for deciding such an application. *Samman Nidhi* cannot be claimed as of right, it is the honour conferred. It is the privilege of the State Government to confer it. The rule cannot be said to be *ultra vires*. It is not required to be read down as opined by the Division Bench.

8. First we come to the question whether the rule can be said to be *ultra vires*. By way of amendment incorporated in the year 1999, the State Government has decided to confer the benefits under the rules with effect from the date the order of sanction of *Samman Nidhi* is passed. No doubt about it that *Samman Nidhi* is an honour conferred on a freedom fighter. In our opinion, the State Government could have enacted such a rule. It is within the ken of power of the State Govt. to provide the benefits from a particular date. The decision in *Mukund Lal Bhandari's case* (supra) rendered by the Apex Court does not come in the way of State to enact the aforesaid rule. In *Mukund Lal Bhandari's case* Freedom Fighter's Pension Scheme 1972 introduced by the Govt. of India came for consideration. There was no provision in the Central Govt. Rules providing any date with effect from which the pension would be payable as such the Apex Court laid down that the pension would be payable from the date of application not from earlier date. Decision in *Mukund Lal Bhandari* (supra) is based on the Central Govt. Rules and it could not be said that mandate of the aforesaid has been violated by the State Govt. by enacting Rule 3(6) providing the benefit of *Samman Nidhi* from the date of passing of the order. We find no force in the submission of Shri R.K. Samaiya that by retrospective operation of the rules any vested right has been taken away. It is apparent that the cases in which the orders have been passed and pension has been sanctioned from the date of the application would not be reopened by virtue of incorporation of Rule 3(6) of the Rules with retrospective effect. In *Devkinandan Maheshwari (S.C.)* the decisions of this Court in *Devakinandan Maheshwari* (supra) and A.P. Shukla came for

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consideration before their Lordships. In *Devkinandan Maheshwari* (supra) the pension was granted with effect from the date of the application relying upon the decision in *Mukund Lal Bhandari's* case. In *A.P.Shukla's* case the pension was ordered to be given with effect from the date of order of rejection, the Apex Court held that decision in *State of M.P. vs. Anand Bihari* (supra) of Division Bench of this Court and *Jagannath Prasad* (supra) rendered by Full Bench of this Court were correctly decided and the decision in *Mukund Lal Bhandari's* case (supra) has no application to the cases where pension has been sanctioned and payment is made under the provisions of MP Rules, 1972. The decision in *Mukund Lal Bhandari* (supra) is distinguishable and order passed by the High Court to the extent providing the pension with effect from the date of application was set aside.

9. The question which arises for consideration in the instant matter is that in case the order of refusal of grant of *Samman Nidhi* is set aside by the Court, whether pension can be granted from the date of refusal to grant it by the State, and whether State can sit over so long as it chooses, on an application which is complete in all respects filed, for the purpose of grant of *Samman Nidhi*. These questions did not crop up for consideration in *Devakinandan Maheshwari (S.C.)* before the Apex Court.

10. Question arises for consideration before us is whether Rule 3(6) of the Rules requires to be read down. In case submission of learned Addl. Advocate General is accepted, in that case, even from the date of reversal by the Court of an order of refusal of grant of *Samman Nidhi*, it cannot be granted with effect from the date when such order of refusal was passed. In his submission, it can be granted only with effect from the date when subsequently State formally passes an order conferring the benefit of *Samman Nidhi* from which date the benefit would be admissible. The *Samman Nidhi* rules have been framed as an obligation of the nation towards the freedom fighters and it carries forward the mandate of Article 41 to public assistance in such cases of old age, sickness, disablement, etc. It also reflects the fundamental duty enshrined in Article 51A(b) of the Constitution of India as it enables an individual to cherish and follow the noble ideals which inspired our national struggle for freedom by honouring such freedom fighters. In order to recognize the sacrifices of the freedom fighters, the rules have been framed by the State of M.P. It is settled proposition that there has to be liberal construction of such remedial statutes.

The scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. They had participated in the freedom struggle without any expectation of getting any benefit monetary or otherwise at the relevant time, therefore, in appreciating the scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It is also to be kept in mind that the claimants of the

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scheme are supposed to be such persons who had given the best part of their life for the country as observed by the Apex Court in *Gurdial Singh vs. Union of India and others* (2001) 8 SCC 8.

In Principles of Statutory Interpretation by Justice G.P.Singh, Former Chief Justice of this Court, it has been observed that in construing a remedial statute the courts ought to give to it "the widest operation which its language will permit. They have only to see that the particular case is within the mischief to be remedied and falls within the language of the enactment." The words of such a statute must be so construed as "to give the most complete remedy which the phraseology will permit," so as "to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved." In the field of labour and welfare legislation which have to be broadly and liberally construed the court ought to be more concerned with the colour the content and the context of the statute rather than with its literal import. The social perspective must play upon the interpretative process. To say so, learned Author has referred to the decisions in *Raghuraj Singh vs. Hari Kishan* AIR 1944 PC 35, *Krishnayya vs. Seshachalam* AIR 1965 SC 639, *Central Railway Workshop, Jhansi vs. Vishwanath* AIR 1970 SC 488, *Surendra Kumar Verma vs. Central Government Industrial Tribunal-cum-Labour Court* (1980) 4 SCC 443. Reference is also to *D.(a minor) vs. Berkshire County Council* (1987) 1 All ER 20 laying down broad and liberal construction to give full effect to the legislative purpose has to be adopted. In *U.P.Drugs and Pharmaceuticals Co.Ltd. vs. Ramanuj* (2003) 8 SCC 334 it was held that where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions.

The provisions of the Juvenile Justice Act, 1986 and the Juvenile Justice (Care and Protection of Children) Act, 2000 came up for consideration before the Apex Court in *Pratap Singh vs. State of Jharkhand* (2005) 3 SCC 551 = AIR 2005 SC 2731. The whole object of both the Acts is to provide for the care, protection treatment, development and rehabilitation of neglected and delinquent juveniles. The Acts being remedial in nature were given liberal construction to promote beneficent object behind them and with this end it was held that the date for determination of age of a juvenile under both the cases is the date of offence not the date when he is produced before the authority or the court. Learned Author Justice G.P.Singh has also referred to the liberal construction recently adopted in interpreting section 123(c) of the Railways Act, 1989 in *Union of India vs. Prabhakaran Vijay Kumar* (2008) 9 SCC 527 which defines "untoward incident" to cover the case of a passenger who fell down and died while trying to board the train. The Author has reminded that in interpreting a legislation regulating the relation between the weaker and stronger contracting parties, K.Iyer, J. advised in *Sant Ram vs. Rajinderlal* AIR 1978 SC 1601 "Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you

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contemplate is going to be of any use to him." The inhibition against retrospective construction has been applied with less insistence in the case of welfare legislations and remedial statutes. The learned Author has further pointed out that the Court must also be vigilant to see that benefits conferred by welfare legislation are not defeated by subtle devices. It is the duty of the court, in every case where ingenuity is expended to avoid welfare legislations, to get behind the smoke screen and discover the true state of affairs. It can go behind the form and see the substance of the transaction as held in *Workmen vs. Associated Rubber Industry Ltd.* AIR 1986 SC 1.

11. In the light of aforesaid, we have to see whether State can be permitted to decide a case illegally and deprive the benefit which ought to have been granted by the order had it been legally passed, and, at the same time, whether it can contend that the Court has no power to grant the benefit from the date of order of rejection in view of Rule 3(6) of the Rules. In *Broom's Legal Maxims, 10th Edition*, in *Hooper v. Lane* 6 H.L.Cas.443, and *Countess of Rutland's Case*, 6 Rep.52 b. it was held that if the sheriff, having in his hands two writs of ca. sa., the one valid and the other invalid, arrested on the latter alone, he could not justify the arrest under the valid writ. Nor could the sheriff, whilst a person was unlawfully in his custody by virtue of an arrest on an invalid writ, arrest that person on a good writ : "to allow the sheriff to make such an arrest while the party is unlawfully confined by him, would be to permit him to profit by his own wrong and therefore cannot be tolerated *Per Ld.Cranworth, in Hooper vs.Lande*, 6 H.L.Cas.443, at p.551.

It is apparent that a person cannot be permitted to profit by his own wrong. There is right of judicial review. To make it efficacious, it is necessary concomitant that Court has the power to substitute the order, and the order passed by the Court has to relate back. The doctrine of relation back has to be given full play to make the remedy effective to the purpose for which rules have been enacted. We are unable to accept the submission raised by Shri Prashant Singh, learned Addl.AG that even if Court holds that order of refusal is absolutely bad in law, the pension would not follow from the date of the order now corrected by the Court, but from a subsequent date on which Government passes a formal order giving the benefit of *Samman Nidhi*. If the rule is construed in the manner as suggested by learned Addl.AG, its operation would become arbitrary and capricious. It cannot be denied by the Government that it is required to pass a final order on the application for giving/conferring the benefit of *Samman Nidhi*. If an authority has the power to grant or refuse the *Samman Nidhi* then that would mean that it has power to pass an order after exercising the discretion as vested in the authority by law. It would be trite to say that the power to decide confers a power to give a wrong decision but however that power is controlled in the system of hierarchy by the higher authority or by the High Court, in the present case by having the power to correct

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the wrong. If a wrong is committed instead of passing a correct and justified order then the moment wrong is set aside or quashed then the order setting aside the wrong would replace the first wrong order. In a case like this, the principles of merger would also apply. Whenever the higher authority passes an order either confirming or setting aside the order passed by the subordinate authority, then the order passed by the subordinate authority would merge in the order passed by the higher authority. In case of concurrence and confirmation, it would always be said that the higher authority has found the order of the lower authority to be correct, however, in case of reversal, it would always be said that the higher authority has corrected the wrong which was committed by the lower authority on the date of passing the wrong order. It is trite law that effort has to be made to interpret the rule as constitutionally envisaged and to ensure that its operation should not violate Article 14 of the Constitution. In case we accept the submission of State Counsel, it would give a room to arbitrariness in action and make strile the right of judicial review which is basic structure of the Constitution. Thus, in our opinion, provision has to be read in such a manner so as to mean that when order of refusal to grant *Samman Nidhi* is absolutely bad in law under Rule 3(6) of the Rules and Court reverse such an order and the pension is granted pursuant thereto, then it is open to the Court to specify the date from which benefit of *Samman Nidhi* would be available, it may relate back to the date on which the order of refusal was passed by State Govt.

We are alive to the situation where the application is incomplete and for rejection of the application the applicant himself was responsible or that he could not collect the entire documents or had filed incomplete application due to which it met rejection, in such a case it would be open to the Court/State to fix a different date as considered proper with effect from the date when the formalities have been completed or the order has been subsequently passed by the State Government for grant of pension depending upon the fact situation of the case, but it cannot be taken as a rule of thumb that invariably in every case where the action of the State is per se illegal, and a complete application has been illegally rejected, the pension would be payable only from the date on which the State chooses to pass fresh order of grant of benefit even after the Court had quashed the decision. Such an interpretation would defeat the purpose of remedial legislation and the intendment of the rules with which they have been framed. It is the honour which is to be conferred, but, at the same time, it is not permissible to act arbitrarily even in the matter of grant of such an honour, and it would be to perpetuate an illegality to enable the State to avoid its obligation when it is legally due. State cannot take the shelter of the rule that it would grant the benefit only from the date when formal order is passed by the State and nor it can successfully contend that a Court is powerless to fix the date of grant of benefit with effect from the date on which illegal order of refusal to grant benefit was passed by State Govt.

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12. Passing of order contemplates that order is passed in conformity with law not in illegal manner. The Court has frowned upon illegal transactions and it has inherent jurisdiction to sanction the legality.

13. Doctrine of relation back has been considered in *Deo Nandan and another vs. Ram Saran and others* (2000) 3 SCC 440. In *Delhi Jal Board vs. Mahinder Singh* (2000) 7 SCC 210 the Apex Court laid down that order of exoneration passed in the departmental enquiry relates back to the date of framing of charges. Question of ratification and relation back has also been considered in *Punjab University vs. V.N.Tripathi and another* (2001) 8 SCC 179 and it has been observed that once ratification is made, it relates back to the date of original act. The ratification has the effect of relating back to the time when the action was taken without authority. Shri Samaiya has also referred to decision in *Jugraj Singh and another vs. Jaswant Singh and others* AIR 1971 SC 761 in which second power of attorney was executed, first being defective, it was held that such ratification relates back to the date of act done and agent is put in same position as if he had authority to do it at that date. The relation back follows from the maxim of law "Omnis ratihabitio retrotrahitur et mandato priori aequiparatur" that is to say, ratification is thrown back to the date of the act done, and the agent is put in the same position as if he had authority to do the act at the time the act was done by him. The Court has inherent powers under the judicial review to relate back the order from the date on which a valid order ought to have been passed in conformity with the law. In *Covell Mathews vs. French Wools Ltd.* (1978) 2 All ER 800 question of date of withdrawal came for consideration. The phrase "date of withdrawal" can only mean in relation to the withdrawal of proceedings by originating summons in the High Court, the date when an order is made that those proceedings be discontinued, subject always to any power of the court to make such an order with retrospective effect.

14. The Apex Court in *Pasupuleti Venkateswarlu vs. The Motor & General Traders* AIR 1975 SC 1409 had observed that relief must be judged to exist as on the date a suitor institutes the legal proceeding. The procedure is the hand-maid of justice. The Court cannot blink at it or be blind to events which rendered the remedy futile. The equitable consideration comes into play bending the rules of procedure to promote substantial justice and it is the domain of the Court to do complete justice between the parties. Court cannot permit unreasonable and discriminatory transactions and be a silent spectator to it. In *Gurdial Singh vs. Union of India and others* (supra) the question came up for grant of pension before the Apex Court under Freedom Fighters' Pension Scheme, 1972 with respect to the date from which it has to be granted. Application for pension initially was not allowed by the authority, but as a result of writ petition filed 23 long years after the filing of the application, the claimant was found to be entitled to pension, in such circumstances, in view of such long lapse of time and the peculiar

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circumstances of the case, the Court ordered to grant the pension not from the date of application, but from the time of filing of writ petition to meet the ends of justice. In *Union of India and others vs. Ganesh Chandra Dolai and others* (1997) 10 SCC 289 as the applicants were given benefit of doubt as regards their being freedom fighters, it was held that they may be entitled for the pension prospectively from the date of the relevant govt.order. In *Union of India and another vs. Kaushalya Devi* (2007) 9 SCC 525 question came up as to the date ordering grant of pension. In the facts of the case, inspite of the provision that the pension has to be granted from the date of application, it was ordered to be granted from the date of the order. The Court observed that pension has to be granted from the date of application does not mean that it cannot be granted from the date subsequent to the application, thus, the Court has the right to mould the relief appropriate to the facts of the case.

15. Coming to question of delay in deciding complete application by the State Govt., there is duty cast upon the Court to ensure that State Govt. does not unnecessarily prolong or delay the disposal of application for grant of Samman Nidhi and escape the liability to pay the amount to the incumbents having genuine claim. No doubt about it that a duty is cast upon the person also who has submitted an application to act with diligence and furnish all the documents in order to enable the State to take a final decision at an early date. There may be non-cooperation on part of the applicant which may result in unnecessary delay. In case there was any delay on part of the authority concerned in dealing with the matter that can be taken care of by the applicant obtaining appropriate direction from the High Court for expediting the enquiry, at the same time, State cannot sit idle as long as it chooses. The delay and laches have no room in adjudication process and there is bounden duty and a constitutional obligation as per mandate of Article 14 to decide the proceedings pending with urgency. To put in the words of Division Bench referring the matter "authority is under legal obligation to decide the proceedings pending for the purpose of providing benefit has to act with immediacy and not get into the hibernation and decide the fate of a claimant, who puts forth his claim as a freedom fighter, at his pleasure and leisure". We are compelled to hold that State is bound to decide such applications within a reasonable time, and we have no hesitation in accepting the suggestion made by Division Bench that in future such applications should be decided within one year from the date of filing of complete application or from the date the application is completed.

16. Resultantly, we answer the reference as follows :-

"(i) The amendment made in Rule 3(6) of M.P.Swatantrata Sangram Sainik Samman Nidhi Niyam, 1972 vide notification dated 8.3.99 cannot be said to be ultra vires;

(ii) The provision in Rule 3(6) that freedom fighters will be entitled

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to claim the benefits of Samman Nidhi from the date of "sanction order", would also mean the date on which order is passed by the State Govt. rejecting the application in a case where such an order is set aside by the Court holding that Swatantrata Sangram Sainani would be entitled for pension;

(iii) State is bound to decide such an application in future with promptitude, to say, within one year from the date an application is filed."

17. Let record of the case be placed before the Division Bench for final hearing of the writ petition on merits.

Order accordingly.

ORDER

AJIT SINGH, J. :- This petition, under Articles 226 and 227 of the Constitution, has been placed before us pursuant to the order of reference dated 28.2.2002 passed by the Division Bench of this Court.

2. Briefly stated the facts are these. Like the Central Government, on the occasion of 25th anniversary of independence, the State Government (respondent no. 1) also introduced the Madhya Pradesh Swatantrata Sangram Sainik Niyam, 1972 (in short, "the Rules, 1972") to honour and acknowledge the sacrifices made by the freedom fighters. The Rules 1972 were framed by the State Government in the exercise of its executive power under Article 162 of the Constitution and notified in the Madhya Pradesh Gazette (Extra-ordinary) on 18.9.1972 by the General Administration Department. In the year 1985 the petitioner, claiming himself a freedom fighter, applied for the benefits of Samman Nidhi on the grounds that he suffered imprisonment and remained underground during the freedom movement. The petitioner's application was forwarded by the Collector, Tikamgarh (respondent no. 2) to the State Government after an enquiry with a report that he was not entitled for any benefits of Samman Nidhi. The application was examined by a sub-committee of the Cabinet constituted to examine such applications and the sub-committee rejected the application in its meeting held on 14.12.1995 by holding that there was no reliable material in support of the claim made by the petitioner that he was either detained or remained underground in connection with the freedom movement. Finally, the Deputy Collector, Tikamgarh, by his memo dated 19.7.1996, Annexure P14, informed the petitioner that the State Government has rejected his application for sanction of Samman Nidhi on the ground that there was no reliable material in support regarding his imprisonment or remaining underground.

3. The petitioner challenged the decision of the State Government rejecting his application in the present writ petition which was filed on 24.6.1996. The

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petition was later amended challenging the vires of Clause (6) of Rule 3 of the Rules 1972 which was added by an amendment by notification dated 8.3.1999. The learned Single Judge, before whom the petition came up for hearing, referred it to the Division Bench for decision on the question of vires of Clause (6) of Rule 3. When the petition came up before the Division Bench, the learned Judges felt some doubt about the correctness of the Full Bench decision of this Court in *Jagannath Prasad Vs. State of M. P. and others* 2001 (3) MPHT 81 and referred the petition for decision before a Larger Bench. This is how the matter has come up before us.

4. On perusal of the order of reference, we formulated the following two questions which arise for our decision:

“1. Whether the amendment made in Rule 3 (6) of M. P. Swatantrata Sangram Sainik Samman Nidhi Niyam, 1972 vide notification dated 8.3.1999 is a valid piece of legislation?

2. What shall be the meaning of the words “sanction order” (स्वीकृति आदेश), whether looking to the intention of the legislature behind enacting 1972 Rules and the amendment in the same, the term “sanction order” would also mean the date on which order is passed by State Government rejecting the application in a case where such an order is set aside by higher forum holding that Swatantrata Sangram Senani would be entitled for pension?”

5. Before proceeding further, it is convenient to have a look at the relevant rules of the 1972 Rules which are reproduced below:

“2. इन नियमों में जब तक प्रसंग से अन्यथा अपेक्षित न हो, :-

(ख) “स्वतंत्रता संग्राम सैनिक” से तात्पर्य उस व्यक्ति से है तथा उसमें ऐसा व्यक्ति शामिल हैं :-

(तीन) जिसे सन् 1919 से 1946 के बीच स्वतंत्रता आंदोलन के संबंधी अपनी राजनैतिक गतिविधियों के कारण एक दिन या उससे अधिक के लिए कैद में रखा गया हो.

(आठ) जो अंडरग्राउन्ड रहे हों किन्तु जिन्होंने कोई कैद नहीं भुगती हो, यदि वे (1) अपराधी उद्घोषित किए गए हों, (2) ऐसे व्यक्ति हों, जिनकी गिरफ्तारी के लिए इनाम घोषित कर दिए गए हों, किन्तु जो गिरफ्तार नहीं किए गए हों या (3) ऐसे व्यक्ति, जिनके लिए निरोधादेश जारी कर दिए गए हों, किन्तु तामील नहीं किए गए हों ;

.आठ-(अ) जो सन् 1919 से 1946 के बीच स्वतंत्रता आंदोलन संबंधी अपनी राजनैतिक गतिविधियों के कारण निरोधादेश के आधार पर जेल में निरोध में रखा गया हो और निरोध की अवधि एक दिन या अधिक हो ;

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3. (1) राज्य शासन निम्नलिखित व्यक्तियों को आजीवन मासिक सम्मान निधि स्वीकार कर सकेगा :-

(क) स्वतंत्रता संग्राम सैनिक ;

- “(6) स्वतंत्रता संग्राम सैनिक, राज्य सम्मान निधि का लाभ स्वीकृति आदेश के दिनांक से प्राप्त करने के पात्र होंगे” (सामान्य प्रशासन विभाग की अधिसूचना क्रमांक एफ 14.19/96/1/13, दिनांक 8 मार्च, 1999 द्वारा संशोधित कर जोड़ा गया।)

यह संशोधन उक्त नियमों के प्रवृत्त होने के दिनांक से प्रभावशील होगा।

4. “(1) रुपये 4000/- (रु. चार हजार) प्रतिमाह राज्य सम्मान निधि स्वीकृत की जावेगी।” उक्त संशोधन दिनांक 1 अप्रैल, 2002 से प्रवृत्त हुआ समझा जाएगा। (सामान्य प्रशासन विभाग की अधिसूचना क्रमांक एफ 1. 111/2001/एक/13, दिनांक 26 मार्च, 2002 द्वारा “रुपए 2000/-” के स्थान पर “रुपए 4000/-” की राशि संशोधित की गई।)

6. It may be stated at the outset that the questions which arise out of the order of reference have relevance for this case only when it is decided that the order of rejection of the petitioner's application for Samman Nidhi suffers from such defects that it can be reviewed by the Court under Articles 226 and 227 of the Constitution. This basic question has so far not been determined either by the Single Bench or the Division Bench and we are also not required to decide it under the order of reference. The better course probably may have been to decide this question first for in case it is ultimately found that no ground for judicial review is made out, the petition will have to be dismissed whatever may be our answers to the questions arising out of the order of reference. And in the event grounds for interference were made out, the court could have quashed the order rejecting the petitioner's application and remitted the case to the State Government for reconsideration giving him opportunity to raise the legal issues, now raised, if he was allowed Samman Nidhi on reconsideration.

7. The true nature of the Rules 1972 is not to provide compensation to the freedom fighters but to honour them. Had the object of the rules been to provide for compensation the monetary benefits would have become payable right from the year 1972 when the rules came into force. It is to be noted that under the rules Samman Nidhi is payable to any freedom fighter irrespective of his income or resources. In fact, in *Mukund Lal Bhandari Vs. Union of India* AIR 1993 SC 2127 the Supreme Court in paragraph 5 pointed out that many of the real freedom fighters refused to accept similar monetary benefits despite their having no sufficient income to maintain themselves as they considered such benefits as an affront to the sense of patriotism with which they plunged in the freedom struggle. In *Mukund Lal Bhandari's case* the monetary benefit under the Central Scheme was allowed

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from the date of application as no date was mentioned in the Scheme from which the monetary benefit (pension) was payable. The 1972 Rules of the State Government directly came up for consideration before the Supreme Court in *State of M. P. Vs. Devkinandan Maheshwari* (2003) 3 SCC 183 by which the Supreme Court decided a bunch of appeals under Article 136 of the Constitution filed by the State Government against the orders of this Court which, in spite of amendment incorporated in Clause (6) of Rule 3 that the *Samman Nidhi* would be payable from the date of order, directed for its payment from the date of application. All these appeals were allowed by a common judgment wherein it was held that the *Samman Nidhi* would be payable from the date of order of sanction in view of Clause (6) of Rule 3. The Supreme Court in its judgment also approvingly referred to the judgment of the Full Bench in *Jagannath Prasad's case* and did not find anything wrong in Clause (6) of Rule 3 which allowed payment of *Samman Nidhi* from the date of order of sanction and was retrospective and was held applicable to pending applications. It is for this reason that the Supreme Court departed from its earlier view taken in *Mukund Lal Bhandari's case* that the monetary benefit (pension) was payable from the date of application. The benefit of this judgment was not available to the Division Bench when the learned Judges passed the order of reference.

8. *Question No. 1:-* The Rules 1972 have been made by the State Government in the exercise of its executive power under Article 162 of the Constitution. The rules made under this Article "may be relaxed, altered or revoked (even with retrospective effect) without any formality, provided there is no legislation or statutory Rules to the contrary, and no provision of the Constitution is violated by such change" (See Durga Das Basu *Shorter Constitution of India Thirteenth Edition* 2001, p. 711). The nature of *Samman Nidhi* as described by the Full Bench in *Jagannath Prasad's case* is "honorarium simpliciter to honour" and not akin to a pension payable for past services. A person applying for *Samman Nidhi* has no right until the same is sanctioned in his favour by the State Government. As the ruling in *Mukund Lal Bhandari's case* led the courts to grant *Samman Nidhi* from the date of filing of applications for it, the State Government was burdened with the liability for payment of arrears for the period of pendency of applications. It was with the object of avoiding this financial burden that Clause (6) was added in Rule 3 with retrospective effect from 1972. In the order of reference the learned Judges have expressed the view that the Government was competent to make Clause (6) of Rule 3 with retrospective effect and it does not offend Article 14 of the Constitution and there is no discrimination or arbitrariness.

9. The learned Judges were, however, of the view that the application for *Samman Nidhi* cannot be allowed to remain pending for a long time and Rule 3(6) be read down to provide that the application will be decided within a reasonable time which the learned Judges thought would be one year. It is difficult to agree

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with this view. It would not be a reading down of Clause (6) of Rule 3 but addition of an artificial proviso to the rule providing a period of limitation for deciding the application which will amount to its amendment which the Court has no authority to make. The delay in disposal of the application can be for various reasons. It may be because of the applicant's inability to produce relevant documents or materials in support of his claim or delay in scrutiny and verification of facts which happened long back. An application to be recognized as freedom fighter is not to be allowed as a matter of course or sympathy but after proper verification of facts alleged by the applicant and the conditions required to be established for the entitlement. For example, a person who claims recognition on the ground of imprisonment has to show that he was imprisoned between 1919 and 1946 at least for a full day in connection with the freedom fighter movement on account of his political activities. Similarly, a person claiming recognition on the ground that he was underground in connection with the freedom movement has to show that he was then proclaimed as an offender or that an award was announced for his arrest or that an order for detention was issued but was not served. The proof and verification of these conditions require time. Unless the requisite conditions are fulfilled, recognition of freedom fighter cannot be granted. For example, in a case where a person was allowed pension under the Central Scheme by the High Court on the ground that he was absconding although requisite conditions were not satisfied that order of the High Court was set aside by the Supreme Court in *Union of India Vs. K. Indrasena Reddy and another* AIR 2007 SC 2484. It cannot also be lost sight of that in addition to Samman Nidhi allowed by the 1972 Rules, a freedom fighter and his family gets other benefits such as preference in employment, reservation of seats in professional colleges, etc. which were noticed by the Supreme Court in *Mukund Lal Bhandari's case*. This consideration also necessitates careful scrutiny of the applicant's claim as freedom fighter for which no time limit can be artificially fixed by the court.

10. In my opinion, the rule is perfectly valid.

11. *Question no. 2:-* A plain reading of Clause (6) of Rule 3 of the Rules 1972 means that the Samman Nidhi will be payable from the date of the order of sanction. The amendment so made in the rule is retrospective from the beginning of these rules. The cases which were decided before the introduction of the amendment and in which the Samman Nidhi was allowed from an earlier date are not affected because no provision is made in the rules for reopening those cases. But the amendment being retrospective will apply to all the pending cases whatever may be the stage at which they are pending. The law on the point is stated in the Principles of Statutory Interpretation by G. P. Singh 12th Edition 2010 p. 575 which reads as follows:

"It is the duty of Courts, whether trying original proceedings or

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hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same. Thus, if a taxing Act is retrospectively changed after reference, the High Court and Supreme Court must take notice of it. For example, if a refund provision in a taxing Act is amended by incorporating the principle of 'unjust enrichment' by providing that no refund shall be made unless the applicant proves that the incidence of tax has not been passed on by him to any other person, the amendment will be taken notice of even when the matter is pending in appeal before the Supreme Court and refund will be disallowed if the applicant fails to establish that the tax burden has not been passed on by him to any other person. Similarly, if a law providing for compensation for an acquisition is retrospectively altered the Collector in making an award and the courts in deciding a reference or appeal relating to compensation must give effect to the change in law."

(The above passage was also quoted with approval by the Supreme Court from the 7th edition of this book in *United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd.* AIR 2000 SC 2957, p. 2962).

12. The Full Bench in *Jagannath Prasad's case* had in my opinion rightly held that the retrospective addition of Clause (6) of Rule 3 will apply to pending proceedings and pending lis. As already mentioned *Jagannath Prasad's case* was referred with approval by the Supreme Court in *State of M.P. Vs. Devkinandan*. The High Court is duty bound to take notice of this retrospective amendment. If the High Court decides to quash the order of State Government and pass an order granting Samman Nidhi to the petitioner whether under Articles 226 or 227 of the Constitution it can do so only from the date of its order as that would only be the date of order of sanction. But as pointed out later, in my view, the court can only remit back the case to the State Government for reconsideration and cannot itself pass an order granting pension.
13. The theory of relation back to which the order of reference refers has no application when there is a retrospective change in law of which the court has to take notice. Normally, a court decides in accordance with the rights of the parties which existed at the time when the lis started. But this principle has no application when there is a retrospective change in law affecting the rights.
14. The present petition is both under Articles 226 and 227 of the Constitution. The scope of Article 226 is wider than Article 227 because writs and directions can be issued to any authority including the Government but the High Court under Article 226 can only quash the order of the State Government and cannot substitute

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its own order in place of the order of the State Government. It can only send back the case to the State Government. This has been very clearly brought out by the Supreme Court in a recent case *Union of India Vs. M. S. Mohammed Rawther* AIR 2007 SC 3014. This case related to the Swatantrata Sainik Samman Pension Scheme of the Central Government. A Division Bench of the Kerala High Court directed the Union of India to grant the pension to petitioner. This order was set aside and the case was remitted to the Union of India to consider and pass appropriate orders in accordance with law. In holding so, the Supreme Court observed as follows:

“The court has only judicial power to review that executive order on Wednesbury principles, but it cannot arrogate to itself the power of the executive. If the order passed by the Union of India is not justifiable on Wednesbury principles the court can only set it aside and remit the matter back to the executive for a fresh decision, but the court cannot assume the power of the Union of India. The court must exercise judicial restraint in such matters. There is broad separation of powers under the Constitution, and one organ of the State should not ordinarily encroach into the domain of another. Montesquieu’s theory broadly applies in India too.”

15. The High Court itself cannot pass an order of sanction of the Samman Nidhi and cannot also direct the State Government to sanction Samman Nidhi or to sanction it from a particular date. It would be for the State Government to sanction Samman Nidhi or not to sanction it on reconsideration. If the State Government decides to sanction Samman Nidhi on reconsideration as directed by the High Court it can do so only from the date of its order in accordance with Rule 6 of the Rules 1972.

16. The question as to why the applicant should suffer because of the delay in the final disposal of his application does not arise in view of the retrospective change in law affecting pending proceedings. Such an argument cannot prevent the application of a retrospective change in law affecting pending proceedings irrespective of the stage at which they are pending.

17. As regards Article 227 of the Constitution, the power of superintendence is limited only against all courts and tribunals. The State Government, while deciding applications under the Rules 1972, is neither a court nor a tribunal. It is obviously not a court. It is also not a tribunal as it does not satisfy the basic test of being a tribunal. In *Associated Cement Companies Ltd. Vs. P. N. Sharma and another* AIR 1965 SC 1595, p. 1606 a Constitution Bench of the Supreme Court laid down the basic test of a tribunal as follows:

“The main and the basic test, however, is whether the adjudicating power which a particular authority is empowered to exercise, has

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been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under R. 6 (5) and R. 6 (6) is a part of the State's judicial power. It has been conferred on the State Government by a statutory Rule and it can be exercised in respect of disputes between the management and its Welfare Officers."

The above test of a Tribunal was reaffirmed by another Constitution Bench of the Supreme Court in *Shri Kihota Hollohon Vs. Mr. Zachilhu and others* AIR 1993 SC 412, p. 449.

18. As in adjudicating the applications under the Rules 1972, which are purely executive instructions, the State Government does not exercise any adjudicatory power under any statute or statutory rules. It cannot be termed as a Tribunal within the meaning of Article 227 of the Constitution. The High Court, therefore, cannot interfere with the order of the State Government under Article 227.

19. My answers to the above questions stated in paragraphs 8 and 11 are as follows:

- (i) Rule 3 (6) of the Rules 1972 is a valid piece of legislation.
- (ii) The term sanction order (स्वीकृति आदेश) would not mean the date of the order passed by the State Government rejecting the application when such order is set aside by the High Court holding the person concerned entitled for Samman Nidhi (pension).

Order accordingly.

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FULL BENCH

Before Mr. S.R. Alam, Chief Justice, Mr. Justice Arun Mishra & Mr. Justice Alok Aradhe

26 March, 2010*

CHINGALAL YADAV

Vs.

STATE OF M.P. & ors.

... Petitioner

... Respondents

A. Constitution, Articles 14 & 19 - Liquor trade - No citizen has any fundamental right to trade or carry on business in liquor and all forms of dealing in liquor have from their inherent nature, been treated as class by themselves by all civilized societies.

(Para 28)

क. संविधान, अनुच्छेद 14 व 19 - मदिरा व्यापार - किसी नागरिक को मदिरा

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का व्यापार करने या कारोबार चलाने का कोई मूलभूत अधिकार नहीं है और मदिरा व्यापार करने के सभी प्रकार उनकी अन्तर्निहित प्रकृति से सभी सम्य समाजों द्वारा उनके वर्ग माने गये हैं।

B. Foreign Liquor Rules, M.P. 1996, Rule 8(1)(a), Country Spirit Rules, M.P. 1995, Rule 9 - Grant of licence in such other manner as directed by general or special order - "In such procedure which may be prescribed by the State Government from time to time" means that it empowers the Government to prescribe the mode of disposal of applications for grant of licence by renewal of applications submitted by existing licensees. (Para 33)

ख. विदेशी मदिरा नियम, म.प्र. 1996, नियम 8(1)(ए), देशी मद्य नियम, म.प्र. 1995, नियम 9 - ऐसे अन्य ढंग से लायसेंस का अनुदान जैसा सामान्य या विशेष आदेश द्वारा निदेशित किया जाए - "ऐसी प्रक्रिया से जो राज्य सरकार द्वारा समय-समय पर विहित की जाए" का अर्थ है कि यह सरकार को विद्यमान लायसेंसधारियों द्वारा पेश आवेदनों के नवीकरण द्वारा लायसेंस प्रदान करने के आवेदनों के निपटारे का ढंग विहित करने के लिए सशक्त करती है।

C. Interpretation of Statute - Executive construction - Principle of executive construction is relevant as admissible aid for construction of a statutory provision which suffers from ambiguity. (Para 34)

ग. कानून का निर्वचन - कार्यकारी अर्थान्वयन - कार्यकारी अर्थान्वयन का सिद्धांत किसी कानूनी उपबंध, जो संदिग्धता से ग्रस्त है, के अर्थान्वयन के लिए ग्राह्य सहायता के रूप में सुसंगत है।

D. Interpretation of Statute - Executive construction - Policy of renewal of existing licence has been in vogue since 2006-07 - Construction placed on ambiguous rule by State Government and continuing for a long period of time is an admissible aid to its interpretation and cannot be disregarded except for cogent reasons. (Para 35)

घ. कानून का निर्वचन - कार्यकारी अर्थान्वयन - विद्यमान लायसेंस के नवीकरण की पॉलिसी 2006-07 से प्रचलित हो गयी है - राज्य सरकार द्वारा संदिग्ध नियम का अर्थान्वयन करना और लम्बी कालावधि तक जारी रखना उसके निर्वचन के लिए एक ग्राह्य सहायता है और तर्कसंगत कारणों के सिवाय अमान्य नहीं की जा सकती।

E. Excise Policy 2010-2011, Foreign Liquor Rules, M.P. 1996, Rule 8(1)(a), Country Spirit Rules, M.P. 1995, Rule 9 - Applications are being invited under new excise policy also - Provisions of new policy are not violative of M.P. Foreign Liquor Rules, 1996 and M.P. Country Spirit Rules, 1995. (Para 36)

ङ. आबकारी पॉलिसी 2010-2011, विदेशी मदिरा नियम, म.प्र. 1996, नियम 8(1)(ए), देशी मद्य नियम, म.प्र. 1995, नियम 9 - नयी आबकारी पॉलिसी के अन्तर्गत भी आवेदन पत्र आमंत्रित किये जा रहे हैं - नयी पॉलिसी के उपबंध म.प्र. विदेशी मदिरा नियम, 1996 और म.प्र. देशी मद्य नियम, 1995 के उल्लंघनकारी नहीं हैं।

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F. Policy Matters - Judicial review - Law discussed. (Para 41)

च. पॉलिसी सम्बन्धी विषय - न्यायिक पुनर्विलोकन - विधि की विवेचना की गयी।

G. Constitution, Article 14 - Liquor trade - Elimination & exclusion from business is inherent - Trade or business in liquor is a special category and must be treated as a class and cannot be placed on same pedestal as other trades - Where State Government frames a policy with object to secure maximum revenue for parting with its privilege to deal in liquor, action of State Government cannot be assailed on the ground that it infringes Article 14. (Para 46)

छ. संविधान, अनुच्छेद 14 - मदिरा व्यापार - कारोबार से विलोपन और अपवर्जन अन्तर्निहित है - मदिरा का व्यापार या कारोबार एक विशेष प्रवर्ग है तथा एक वर्ग के रूप में माना जाना चाहिए और अन्य व्यापारों के समान एक ही आधार पर नहीं रखा जा सकता - जहाँ राज्य सरकार अधिकतम राजस्व प्राप्त करने के उद्देश्य से मदिरा के सम्बन्ध में कार्यवाही करने के उसके विशेषाधिकार से अलग होकर कोई पॉलिसी बनाती है, वहाँ राज्य सरकार के कृत्य को इस आधार पर चुनौती नहीं दी जा सकती कि वह अनुच्छेद 14 का अतिक्रमण करती है।

H. Excise Policy 2010-2011, Foreign Liquor Rules, M.P. 1996, Rule 8(1)(a), Country Spirit Rules, M.P. 1995, Rule 9 - It is open to State Government to renew the licence of existing licensee on such condition - New policy is a valid policy as same is not in contravention of Rule 8(1)(a) of M.P. Foreign Liquor Rules, 1996 and Rule 9 of M.P. Country Spirit Rules, 1995. (Para 57)

ज. आबकारी पॉलिसी 2010-2011, विदेशी मदिरा नियम, म.प्र. 1996, नियम 8(1)(ए), देशी मद्य नियम, म.प्र. 1995, नियम 9 - राज्य सरकार स्वतंत्र है कि ऐसी शर्त पर विद्यमान लायसेंसधारकों के लायसेंस को नवीकृत करे - नयी पॉलिसी विधिमानी पॉलिसी है क्योंकि वह म.प्र. विदेशी मदिरा नियम, 1996 के नियम 8(1)(ए) और म.प्र. देशी मद्य नियम, 1995 के नियम 9 के उल्लंघन में नहीं है।

Cases referred :

ILR 2008 MP 2778 (Affirmed), AIR 1990 P & H 144, AIR 2008 SC 2012, (1996) 3 SCC 434, AIR 1969 SC 1081, AIR 1991 SC 1947, (1995) 1 SCC 574, 2006 AIR SCW 1869, 2007 AIR SCW 6416, (2008) 10 SCC 607, 2001(4) MPLJ 69, (1986) 4 SCC 566, (2004) 11 SCC 26, (2008) 4 SCC 720, (2001) 3 SCC 635, (2002) 7 SCC 104, (2003) 8 SCC 100, AIR 1975 SC 1121, AIR 1951 SC 318, AIR 1954 SC 220, AIR 1957 SC 414, AIR 1958 SC 398, AIR 1972 SC 1863, AIR 1957 SC 699, AIR 1972 SC 1816, AIR 1975 SC 360, AIR 1996 SC 285, (1980) 3 SCC 97, (1996) 2 SCC 405, (1998) 4 SCC 117, (2002) 2 SCC 333, (2003) 4 SCC 298, (2009) 7 SCC 561, (1994) 6 SCC 651.

Brain Da'Silva with Vijay Sharma, J.K. Mehta, Narendra Singh Kirar,

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Ashok Agrawal, Manish Datt, Rajesh Maindiretta, Abhijeet A. Awasthi, D.S. Raghuvanshi, Rahul Sethi & Prashant Sharma, for the petitioners.

Naman Nagrath, Addl.A.G., for the respondent/State.

Rajendra Tiwari with Nikhil Tiwari, N.S. Ruprah & Sanjay Patel, for the interveners.

ORDER

The Order of the Court was delivered by S. R. ALAM, C. J. :—The Division Bench having found difficulty in agreeing with the view taken by another Division Bench of this Court in *Madan Mohan Chaturvedi Vs. State of Madhya Pradesh* (ILR 2008 MP 2778) has referred the following questions for the opinion of the Larger Bench :—

(1) *Whether in the language of Rule 8(1)(a) of the M.P. Foreign Liquor Rules, 1996 and Rule 9 of the M.P. Country Spirit Rules the Government has power to renew the licence or it has to invite applications for each and every shop, every year?*

(2) *Whether the judgment in the matter of Madan Mohan (supra) decides the law correctly when it reads "or in any such other manner as the State Government may direct from time to time" will qualify the powers of the Government in granting the licence or the above referred phrase has to be read in relation to disposing of the applications which cannot be disposed of by draw of lottery?*

(3) *Whether 2010-2011 Liquor Policy which relates to renewal is a valid policy and whether such policy is likely to create monopoly in favour of all such persons who are ready and willing to give 20% extra on the existing basic licence fee and licence fee and such persons are providing 80% of the revenue?*

(4) *Whether the policy is a valid policy when it says that the applications for grant of the licence shall not be invited but an application for renewal shall only be entertained while Rule 8(1)(a) provides that the licence in Form FL-1 shall be granted individually on fixed basic licence fee and licence fee, by inviting applications for each shop?*

(5) *Whether the judgment in the matter of Madan Mohan Chaturvedi referred to above decides the question of vires of the policy and if no, whether this Court has jurisdiction to consider the constitutional validity/statutory validity of the policy?*

2. In order to appreciate the questions referred and to resolve the controversy, it would be appropriate to state few necessary facts which briefly stated, are that

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the Excise Commissioner announced Excise Policy for grant of licence in respect of country/foreign liquor retail shops for the year 2010-2011 (hereinafter referred to as the 'New Policy'). The New Policy was published in Madhya Pradesh Gazette dated 28.1.2010. It provides that the applications are to be invited at the first instance from the existing licensees for allotment of shops of country/foreign liquor by way of renewal provided they offer 20% extra licence fees on the reserved price of previous year, i.e., 2009-10. Clause 5 of the policy provides that reserved bid approved for 2010-2011 would be 20% over and above, the reserved bid approved for 2009-2010. Thus, if the existing licence holder applies for renewal of his licence stating that he is ready and willing to pay 20% extra, on the reserved bid approved for the 2009-2010, his licence shall be renewed. Clause 9 provides that renewal will take place only when the said renewal will generate more than 80% of the estimated revenue for the year 2010-2011 at the district level. Under the New Policy left over shops are to be allotted by way of tender.

3. Salient feature of new policy is that renewal of licence is dependent on fulfillment of twin conditions, namely, an existing licensee applies for renewal with the offer that he is ready and willing to pay 20% over and above on the reserved bid approved for previous year and the renewal shall take place only when the said renewal will generate more than 80% of the estimated revenue at the district level.

4. In the present bunch of cases, there are two sets of petitions. Petitioners of Writ Petition No.1632/2010 are aggrieved with the New Policy to the extent it prevents them from making an offer at par with the existing licensees of 2009-2010, even if, they are ready and willing to submit a higher offer and, therefore, they have sought a writ of mandamus commanding the respondents to issue the application forms and consider their applications which may be submitted by them.

5. In second set of writ petitions, namely, W.P. No.1636/2010, Writ Petition No.2080/2010, W.P. No.2110/2010, W.P. No.2145/2010, W.P. No.2181/2010, W.P. No.2281/2010, W.P. No.2915/2010, W.P. No.2284/2010, the petitioners are existing licensees and are aggrieved with the condition of renewal in Clause-9 of the policy which creates a rider on the right of renewal to the effect that unless it generates more than 80% of the estimated revenue for the year 2010-2011 at the district level, renewal shall not be granted.

6. The Division Bench was of the view that only when disposal of applications is not possible by draw of lottery, then the expression *'or in such other manner as the State Government may direct from time to time'* comes into play and permits the State Government to direct such other manner of disposal of applications, and therefore, proper appreciation and interpretation of Rule 8(1)(a) of M.P. Foreign Liquor Rules, 1996 does not authorise the State Government to adopt a policy of renewal. Division Bench while making reference further opined

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that the New Policy is patently illegal and runs contrary to Rule 8(1)(a) and 9 of Rules, and it creates monopoly in perpetuity in favour of existing licence fees only by offering enhancement of existing licence fee by 20%, which would close the doors for those who are willing to offer more than 20%.

7. However, before adverting to the questions referred to us, we may record the submissions made at the bar on behalf the parties.

8. Learned counsel Shri Mehta and Mr. N.S. Kirar appearing for petitioner of Writ Petition No.1636/2010, submitted that the New Policy is not in tune with the provisions of Rule 8 contained in M.P. Foreign Liquor Rules, 1996 and Rule 9 of the M.P. Country Spirit Rules, 1995, because it defeats the very purpose and object of the Rules, which contemplate a participatory, fair and transparent process for grant of licence. The contention is that Rule 8 of M.P. Liquor Rules, 1996, prescribes a non-discriminatory process and it provides grant of licence by inviting of applications, whereas provisions of the New Policy exclude the petitioners from making an offer at par with existing licensees and are thus, discriminatory, unfair, unintelligible and anti-competitive.

9. Learned counsel further drew our attention to Rule 8(1)(a) of M.P. Foreign Liquor Rules, 1996 and Rule 9 of the M.P. Country Spirit Rules, 1995, and stressed on the expression "inviting application for each/every shop" and sought to argue that allotment of liquor shops can only be proceeded after giving general invitation calling applications from all eligible and willing persons. He further argued that phrase occurring in rule 8 "in such other manner as the State Government may direct from time to time" and in rule 9 "or by any such procedure as may be prescribed by the State Government from time to time" has to be read in conjunction with the disposal of application and not with grant of licences. The contention is that aforesaid two phrases permit the State to adopt such other manner for the disposal of the applications only and it does not empower the State Government to evolve any other mode which may frustrate the very spirit and object of the Rules. He, however, qualified his aforesaid contention by submitting that only when draw of lottery becomes impossible, then it would be open to the Government to provide such other manner for the disposal of the applications for grant of licence. In support of the contentions, learned counsel has placed reliance on the following authorities, namely, *Daljit Singh Ahluwalia Vs. Chandigarh Housing Board, Chandigarh and others* (AIR 1990 P & H 144), *M/s Parakh Foods Ltd. Vs. State of A.P. and another* (AIR 2008 SC 2012) and *Collector of Central Excise, Hyderabad and others Vs. Vazir Sultan Tobacco Company Ltd. Hyderabad and others* [(1996) 3 SCC 434].

10. Learned counsel while assailing the New Policy further submitted that it creates a monopoly in favour of the existing licensees because all other persons are totally excluded even from submitting application for consideration of grant of

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licence and, thus, it is discriminatory. In support of this submission, reliance has been placed on a decision rendered by the Constitution Bench of Apex Court in *Rasbihari Panda etc. Vs. State of Orissa* (AIR 1969 SC 1081). The next limb of his submission is that when the State decides to part with the privilege to carry on the business of trade in intoxicants, its action has to be in consonance with the principles of Article 14. He placed reliance on the judgment of Apex Court in *Doongaji and Co. Vs. State of M.P.* (AIR 1991 SC 1947) in support of aforesaid proposition. Relying on the decision of the Apex Court in *Khoday Distilleries Ltd. and others Vs. State of Karnataka and others* [(1995) 1 SCC 574], it is argued that State can adopt any mode for grant of licence for trade or business with a view to maximize its revenue, but the method adopted should not be discriminatory otherwise it would be hit by Article 14 of the Constitution of India. During the course of submission, he also sought to argue that by formulating the New Policy, the State Government has adopted the policy of "take it or leave it" which has been held to be violative of Article 14 of the Constitution. Learned counsel referred to decisions of Supreme Court in *Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala* (2006 AIR SCW 1869). And *Reliance Energy Limited and Another Vs. Maharashtra State Road Development Corporation Ltd. and others* (AIR SCW 6416) to contend that Article 14 of Constitution of India embodies the principle of non-discrimination.

11. Learned counsel further submitted that the interpretation to Rule 8 of M.P. Liquor Rules, 1996 given by Division Bench of this Court in *Madan Mohan Chaturvedi Vs. State of M.P. and others* [ILR (2008) MP 2776] is not correct as the same is opposed to the object and spirit of Rule 8 of M.P. Foreign Liquor Rules, 1996. It is further submitted that the interpretation given by the Division Bench, if accepted, it would tantamount to giving an uncanalised and arbitrary power to State Government to issue licences at its whim and caprice, which would be against the mandate of Article 14. The argument is that Rule 8 of M.P. Foreign Liquor Rules, 1996 has to be construed in such a manner so as to subserve the mandate of Article 14.

12. Mr. Brian D'Silva, learned Sr. counsel appearing for the existing licencees in Writ Petition No.2181/2010, though supported the New Policy, so far as it provides for renewal of the existing licencees, but assailed Clause-9, which provides that the renewal will be allowed only when it would generate more than 80% of the estimated revenue for the year 2010-2011 at the district level on the ground inter alia that the same is arbitrary. He referred to the previous policy and pointed out that change in policy should not be made in such a way so as to wipe out the right of renewal. It is submitted that the condition that the renewal would be allowed provided 80% of the revenue of the district is generated or collected under the renewal applications is violative of doctrine of legitimate expectation. He placed reliance on the judgment of the Apex Court in *State of M.P. and*

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others Vs. Lalit Jaggi [(2008) 10 SCC 607]. Mr. Manish Datt, learned counsel appearing in Writ Petition No.2110/2010, while adopting the contentions made by Mr. Brian Da. Silva, further added that prescription of criteria of generation of 80% revenue of the preceding year at the district level will give rise to formation of cartel. In Writ Petition No.2281/2010, Mr. Siddharth Gupta, learned counsel appearing for the petitioner also adopted the submission of Mr. Brian Da. Silva, but challenged the fixation of 80% ceiling for renewal of licence on the ground that it is arbitrary. Mr. Ashok Agrawal, learned counsel for the petitioner in Writ Petition No.2080/2010, submitted that prescription of condition of 80% for renewal of licence is unworkable and the existing licensee in a district where 80% of the revenue has not been generated would be deprived of his right of renewal. He placed reliance on a decision of Division Bench in *State of M.P. and others Vs. M/s Swami Traders* [2001(4) MPLJ 69].

13. On the other hand, Mr. Naman Nagrath, learned Additional Advocate General, appearing for the respondents while combating the submissions made by learned counsel for petitioners, has referred to various provisions of the Act as well as Rules, particularly Rule-XXII notified vide Notification dated 4.7.1959. He also drew our attention to Rule 2 of Rules of General Applications. He has referred to Section 18(1) of the M.P. Excise Act, 1915 (hereinafter referred to as 'the Act') to contend that aforesaid provision empowers the State Government to grant lease to any person on such condition and for such period as it may think fit, the right to sell by wholesale or retail any liquor or intoxicating drugs. He has also drawn our attention to Section 28(1) of the Act which provides that every licence granted under the Act shall be issued or granted on payment of such fees for such period, subject to such conditions and restrictions and shall be in such form as may be prescribed. Vide notification dated 4.7.1959, the State Government has framed the Rules which have statutory force. Rule XXII of the aforesaid Rules deals with disposal of licences. Rule XXII (1) provides that licence for manufacture and sale of intoxicants shall be disposed of by tender, auction, fixed licence fee or in such other manner as the State Government may by general or special order direct. While referring to rule II of the Rules of General Application it has been contended that Rule II provides for retail or wholesale licences of intoxicants for a period not exceeding five years as the State Government may in each case or class of cases decide. Learned counsel has also drawn our attention to rule 8(2) of the M.P. Foreign Liquor Rules, 1996 to contend that licences in form FL 1 can be granted for a period of one year or shorter period unless directed otherwise by the State Government.

14. Relying on the aforesaid provisions of the Act and Rules, it was contended that the State Government has ample power of renewal of licence. It is submitted that Rule 8 of the M.P. Foreign Liquor Rules, 1996, has to be read in conjunction with Rule XXII of the Rules referred to above notified vide Notification dated

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4.7.1959. He further submitted that renewal of licence was provided in the policy of 2009-2010 itself and the existing licencees having accepted the aforesaid Policy with open eyes cannot now be permitted to turn around and challenge the same. While referring to Rule 8 of M.P. Foreign Liquor Rules, 1996 and Rule 9 of M.P. Country Spirit Rules, 1995, it is submitted that if the interpretation put forth by the petitioners is accepted, then it would mean that the State Government can grant licence only by inviting applications and all other modes stands excluded. The submission, therefore, is that the phrase "or in such other manner as the State Government may direct from time to time" has to be interpreted in such a manner which makes the provision workable and permits the Government to determine any other mode to grant the licence. He placed reliance on the judgment of the Apex Court in *State of M.P. And others Vs. Nandlal Jaiswal and others* [(1986) 4 SCC 566] and contended that expression "in such other manner as the State Government may by general or special order direct" in Rule XXII of the Rules notified vide notification dated 4.7.1959 was interpreted by the Supreme Court and it was held that the aforesaid Rule provides for four different modes i.e. tender, auction, fixed licence fee or such other method as the State Government may by general or special order direct. These four modes are alternative to one and another and any one of them may be resorted to for the purpose of disposing of a licence. There is nothing in the language of rule XXII to justify the interpretation that an earlier mode of disposal set out in the rule excludes a latter mode. In view of exposition of law by the Supreme Court, Rule 8(1) (a) of M.P. Foreign Liquor Rules, 1996 has to be interpreted, accordingly.

15. Learned counsel has contended that logic behind incorporation of clause 9 in the policy is that if the applications are not received for 80 % of the value at the district level then tenders will be invited, thus, extra amount may be offered in case of profitable shops and left over shops where there is likelihood of getting less amount in such a case loss of revenue will be compensated. In order to substantiate this fact, he has drawn our attention to the following figures, mentioned in para 5 of the return:

Year	No. of left over shops	Reserve price of left over shops	Maximum offer price Accepted in tender	Decrease in percentage
06-07	324	Rs. 371.39 crores	Rs.350.47 crores	(-) 5.63%
07-08	299	Rs.285. 06 crores	Rs.267.52 crores	(-) 6.15%
08-09	183	Rs.275.57 crores	Rs.247.68 crores	(-) 10.12%

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16. It is also argued on behalf of the State that the policy of renewal is in practice since 2006-2007. clause 9 has been incorporated in the policy of the year 2010- 2011 which provides for application for renewal for district would be considered only when such minimum number of applications are received from a district which constitute and make up at least 80% increased revenue expected by the State by that district. Clause 9 is intended only to maximize and augment State revenue by ensuring that more and more licensees opt for renewal with 20% increase so as to ensure at least receipt of 80% of the revenue. By incorporation of such provision in the policy the State has ensured that applications for renewal were received even in case of those shops which were not profitable and the contractors were prompted to apply for renewal for even such shops in order to secure their profit making shops. It is submitted that by adopting this policy of renewal of existing licencees, there has been increase to the extent of 100% in cumulative growth of revenue. To substantiate this, he drew our attention to the table mentioned in further submissions filed on behalf of the State Government, which is extracted hereinafter :-

Year	Amount received from auction of liquor shops (in crore)	Year	Amount received by inviting applications and tender for left over shops
96-97	464.93	2004-05	866.00
97-98	495.44	2005-06	1015.69
98-99	558.13	2006-07	1152.69
99-2000	670.47	2007-08	1366.18
2000-01	720.13	2008-09	1612.92
2001-02	574.54	2009-10	2127.49
2002-2003	774.71	2010-11	2437.43
2003-04	864.46	Expiated	
CAGR -	less than 9.3%	CAGR -	above 18.6%

17. Learned Additional Advocate General further submitted that this Court would be slow to interfere with the New Policy laid down by the State Government pertaining to grant of licences for manufacture and sale of liquor as the same being a matter of economic policy as has been held in para 33 of the judgment of the Apex Court in *Nandlal Jaiswal* (supra). He further submitted that permissive privilege to deal in liquor is not a right at all, as has been held by the Apex Court

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in para 113 of the judgment in *State of Punjab and another Vs. Devans Modern Breweries Ltd and another* [(2004) 11 SCC 26].

18. The argument is that while exercising the power of judicial review, this Court cannot be oblivious to the practical needs of the Government and the door should be left open for trial and error. In support of this proposition, he placed reliance on Apex Court judgment in *Government of Andhra Pradesh and others Vs. P. Laxmi Devi* [(2008) 4 SCC 720]. Learned Additional Advocate General, argued that this Court would not interfere in the policy decision of the State Government unless it is found to be malafide, unreasonable, arbitrary or unfair. He further submitted that in the matter of economic policy, more judicial restraint is required.

19. Whether any particular policy should be adopted or not, should be left to the discretion of the State. Reference has been made to decision of Supreme Court in *Ugar Sugar Works Ltd. V. Delhi Administration and Others*, (2001) 3 SCC 635. Learned counsel has also placed reliance on decisions in *Ramchandra Murarilal Bhattad v. State of Maharashtra and Others*, (2007) 2 SCC 588 and *Government Tamil Nadu v. K. Vinayagamurthy*, (2002) 7 SCC 104 (2002) 7 SCC 104. He has further submitted that the policy formulated by the State Government is aimed at generating the revenue in respect of non-revenue earning shops.

20. While concluding his submission, he argued that the policy being aimed at generating the revenue in respect of non-earning revenue shops is rational and has been formulated with the object to obtain maximum revenue, there seems to be no reason to interfere with the same. Lastly, he submitted that in the absence of any ingredients in Rule 8 of the M.P. Foreign Liquor Rules, 1996 for applicability of principle of *reddendo singula singulis* it has no application.

21. We have also heard learned counsel for interveners who have supported the case of the State Government. Mr. Rajendra Tiwari, learned senior counsel has submitted that provision of renewal was made in last years' policy. Provision of renewal of existing licence has been made in the policy based on past experience of the State Government that policy of renewal would fetch more revenue as compared to mode of individual allotment. It has further been contended that expression "in such other manner as the State Government may direct from time to time" is preceded by the word "or" which is disjunctive. Therefore, the aforesaid expression has to be interpreted to mean that the State Government has the authority to grant the licence in any other mode as well which may be prescribed. Mr. N.S. Ruprah, learned counsel appearing for interveners in WP No.1632/2010 has adopted the submissions made on behalf of the State Government and has relied on decisions in *Nandlal Jaiswal (supra)* and a decision of Supreme Court in *5 M&T Consultants, Secunderabad v. S.Y. Nawab*, (2003) 8 SCC 100 in support of his contentions.

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22. Mr. Sanjay Agrawal, learned counsel for interveners in WP No.2080/2010 and WP No. 2110/2010 while supporting the stand taken by the State Government has drawn our attention to provisions of Foreign Liquor Rules as originally enacted. It has been argued that under rule II (iii-a) of the Rules, licence in Form FL-1 could be granted by the State Government by auction or under the fee per bottle system or by combination of both or in such other manner as the State Government may from time to time, by general or special order directs. He has also drawn our attention to rule 8 of M.P. Foreign Liquor Rules as originally enacted which provide for grant of licence in Form FL-1 either by auction/ tender or under the 'fee per bottle system' or a combination of both the systems or in such other manner as the State Government may from time to time by general or special order direct. Learned counsel has further contended that first and second part of rule 8 of M.P. Foreign Liquor Rules cannot be read in conjunction with each other and are independent provisions. It has been submitted that earlier also expression "in such other manner as the State Government may direct from time to time" has been used by legislature therefore, it gives rise to presumption that legislature intended to convey the same meaning as in earlier statute. It has further been argued that the policy is still at experimental stage and therefore, it cannot be said that it is contrary to public interest. Learned counsel for existing licensee, Mr. Sanjay Patel has also supported the stand taken by the State Government and has adopted the arguments.

23. Looking to the pleadings of the parties and the submissions referred to above, following issues are required to be addressed by this Court to answer the reference, viz. (i) nature of right to deal in business of liquor; (ii) interpretation of rule 8 (1) (a) of M.P. Foreign Liquor Rules, 1996 and rule 9 of M.P. Country Spirit Rules, 1995; (iii) whether the excise policy for the year 2010-2011 is violative of rule 8 of M.P. Foreign Liquor Rules, 1996 and rule 9 of M.P. Country Spirit Rules, 1995; (iv) scope of interference in policy matters in exercise of power of judicial review and whether new policy is violative of Article 14 of the Constitution of India; (v) whether the Division Bench of this Court in *Madan Mohan Chaturvedi v. State of M.P.*, ILR 2008 MP 2776 has correctly interpreted rule 8(1) (a) of MP Foreign Liquor Rules, 1996 (vi) whether principle *reddendo singula singulis* can be applied while interpreting rule 8(1) (a) of M.P. Foreign Liquor Rules.

24. Having formulated the issues which arise for consideration we proceed to deal with them in seriatim.

(i) nature of right to deal in business of liquor :

25. The Constitution Bench of the Supreme Court in *Har Shankar and Others etc. v. The Deputy Excise and Taxation Commissioner and others, etc.*, AIR 1975 SC 1121 while dealing with right to deal in the business of intoxicants approved the ratio of earlier decisions, namely, decision of the Constitution Bench

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in the *State of Bombay vs. F.N. Balsara*, AIR 1951 SC 318 and *Cooverjee B. Bharucha v. Excise Commr. And the Chief Commr. , Ajmer*, AIR 1954 SC 220, *State of Assam v. A. N. Kidwai* AIR 1957 SC 414, *Nagendra Nath Vora and another vs. Commissioner of Hills Division*, AIR 1958 SC 398, *Amar Chandra Chakraborty v. Collector of Excise, Government of Tripura*, AIR 1972 SC 1863, *State of Bombay vs. R.M.D.Chamarbaugwala*, AIR 1957 SC 699, *State of Orissa v. Harinarayan Jaiswal*, AIR 1972 SC 1816 and *Nashirwar etc. vs. State of M.P. And others*, AIR 1975 SC 360 and has held that there is no fundamental right to do the business or deal in intoxicants.

26. Another constitution Bench of the Supreme Court in *Khoday Distilleries Ltd. And Others v. State of Karnataka and Others*, (1995)1 SCC 574 after taking note of all previous decisions on the nature of right to deal in business of liquor summarized the law on the subject as follows:

"60. We may now summarise the law on the subject as culled from the aforesaid decisions.

(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1) (a) to (g) are therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.

(b) The right to practice any profession or to carry on any occupation, trade or business does not extend to practicing a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilized societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., *res extra commercium*, (outside commerce). There cannot be business in crime.

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence, the trade or business in liquor can be completely prohibited.

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(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

(e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

(f) For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are *res commercium*. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself, to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business.

(h) The State can adopt any mode of selling the licences for trade or business with a view to maximize its revenue so long as the method adopted is not discriminatory.

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(i) *The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business.*

(j) *The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence, the mere fact that the State levies taxes and fees on trade or business in liquor or income derived from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.*

(k) *The State cannot prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.*

(l) *Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.*

(m) *The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes for preventing their abuse or diversion for use as or in beverage."*

27. Similarly another Constitution Bench of the Supreme Court in *Devans Modern Breweries Ltd and another* (supra) held that trade in liquor is not a fundamental right. It is a privilege of the State. The State parts with this privilege for revenue consideration. It was further held that permissive privilege to deal in

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liquor is not a right at all. The levy charged for parting with that privilege is neither a tax nor a fee. It is simply a levy for the act of granting permission or for exercise of power to part with privilege. Similar view was taken by a two-Judge Bench of the Supreme Court in a recent decision reported in (2009) 3 SCC 157 wherein once again it was reiterated that no person has any fundamental right to carry on business in liquor it being *res extra commercium*.

28. Thus, from the aforesaid authoritative pronouncement of law by the Supreme Court it is graphically clear that no citizen has any fundamental right to trade or carry on business in liquor and all forms of dealing in liquor have from their inherent nature, been treated as class by themselves by all civilized societies. In view of injurious effect of excessive consumption of liquor on health the trade or business of liquor must be treated as a class by itself and cannot be treated on the same basis while considering the challenge on the touchstone of Article 14 of the Constitution of India.

(ii) Interpretation of rule 8 (1) (a) of M.P. Foreign Liquor Rules, 1996 and rule 9 of M.P. Country Spirit Rules, 1995;

29. Before dealing with this issue, it is relevant to trace legislative history of the rules. From perusal of rule II (iii-a) of the Foreign Liquor Rules as originally enacted, it is apparent that licence in Form FL-1 could be granted by the State Government by auction or by fee per bottle system or by combination of both or in such other manner as the State Government may from time to time by general or special order directs. Rule 8 of the M.P. Foreign Liquor Rules, 1996 as originally enacted provided for grant of licence in Form FL-1 either by auction/tender or under "fee per bottle system" or by combination of both the system or in such other manner as the State Government may from time to time by general or special order may directs. Similarly, rule XXII of rules framed by the State Government which were notified vide notification dated 4.7.1959 provide that licence for manufacture or sale of intoxicants shall be disposed of by tender, auction, fixed licence fee or in such other manner as the State Government may by general or special order directs.

30. Relevant portion of rule 8 (1) (a) of M.P. Foreign Liquor Rules, 1996 and rule 9 of M.P. Country Spirit Rules, 1995 reads as under:

"8 (1) Categories of licences. -

Licenses for the sale of foreign liquor shall be of the following categories and the mode of grant of these licenses shall be as indicated hereunder:-

(a) F.L.1. (License for retail sale of foreign liquor in sealed bottles, not to be consumed on the premises) - The licence in Form F.L.1 shall be granted individually on fixed

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basic licence fee and licence fee, by inviting applications for each shop, and if the number of applications are more than one then by disposing of applications by draw of lottery or in such other manner as the State Government may direct from time to time. The F.L.1 licensee shall sell foreign liquor in sealed bottles to consumers and to F.L.3, F.L.4-A and F.L.5 licences:

Provided that if no application is received, then the State Government may grant licence in such other manner as directed by general or special order."

"9. Sale of country spirit (1) Categories of licences- Licences for the retail sale of country spirit shall be of the following categories, and the mode of grant of these licences shall be as indicated hereunder:-

(a) CS-2 (On licence for retail sale of country spirit in sealed bottles to be consumed on the licensed premises)

The licence shall be granted individually on fixed basic licence fees and annual licence fees by inviting application for every shop and in case of more than one application, disposing them by draw of lottery or by any such procedure as may be prescribed by the State Government from time to time. " The licensee shall sell country spirit in sealed bottles to consumers. CS -2BB licensee and CS-2CC permit holder."

31. From careful scrutiny of the language employed in rules, it is apparent that licence has to be granted individually by inviting application for every shop and where more than one applications are received, they are to be disposed by draw of lottery or by any such procedure/manner as the State Government may direct from time to time. However, the rule does not provide for contingency when the recourse can be taken for disposal of application by draw of lottery.

32. A careful reading of Rule 8 of the M.P. Foreign Liquor Rules, 1996 and Rule 9 of the M.P. Country Spirit Rules reveals that it does not provide for a contingency when resort to drawing of lots has to be taken, therefore, the Rule is ambiguous to the extent. It is well settled rule of statutory interpretation that if the statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. [see AIR 1966 SC 361, AIR 2002 SC 1432]. Therefore, the expression 'or in such procedure which may be prescribed by the State Government from time to time' has to be interpreted in such a manner so as to reflect the intention of the Legislature. From perusal of Rule II (iii-a) of the M.P. Foreign Liquor Rules, 1996 as originally enacted and Rule 8 of the M.P. Foreign Liquor Rules, 1996

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originally enacted as well as Rule XXII of the Rules framed by the State Government which were notified by Notification dated 4-7-1959 the Legislature has consistently used the expression 'in such other manner as the State Government may in general or special order directs.' The aforesaid expression has been interpreted by the Supreme Court in *Nandlal Jaiswal and others* (supra) and their Lordships held that it empowers the State Government to prescribe a mode of disposal of applications for grant of licence. At this juncture it is appropriate to reproduce the relevant portion of para 4 of *Nandlal Jaiswal's case*, which is as under:

"On a plain grammatical construction of Rule XXII it is obvious that the Collector or an officer authorised by him in that behalf can choose any one of the four modes set out in that rule. There is nothing in the language of Rule XXII to justify the interpretation that an earlier mode of disposal set out in the rule excludes a latter mode or that reasons must be specified where a latter mode is adopted in preference to an earlier one. The language of Rule XXII in fact militates against such construction. It is impossible to subscribe to the proposition that it is only when an earlier mode is not possible to be adopted for reasons to be specified, that a latter one can be followed. The Collector or an officer authorised by him can adopt any one of the four modes of disposal of licence set out in Rule XXII, but, of course, whichever mode be adopted, the equality clause of the Constitution should not be violated in its application."

Therefore, the expression 'or in such procedure which may be prescribed by the State Government from time to time' has to be read in such manner which represents the true intention of the Legislature, as stated above.

33. We have, therefore, no hesitation in holding that the expression 'or in such procedure which may be prescribed by the State Government from time to time' means that it empowers the Government to prescribe the mode of disposal of applications for grant of licence by renewal of applications submitted by existing licensees.

34. There is yet another aspect of the matter. The principle of executive construction is relevant as admissible aid for construction of a statutory provision which suffers from ambiguity. Reference in this connection may be made to the decision of the Supreme court in *Hindustan Lever Ltd. vs. Ashok Vishnu Kate and others*, AIR 1996 SC 285. At this stage, it would be useful to reproduce the relevant extract with regard to principles of 'executive construction' from Principles of Statutory Interpretation by Justice G.P. Singh (12th Edition, page 344):

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"But a uniform and consistent departmental practice arising out of construction placed upon an ambiguous statute by the highest executive officers at or near the time of its enactment and continuing for a long period of time is an admissible aid to the proper construction of the statute by the court and would not be disregarded except for cogent reasons. The controlling effect of this aid which is known as 'executive construction' would depend upon various factors such as the length of time for which it is followed, the nature of rights and property affected by it, the injustice resulting from its departure and the approval that it has received in judicial decisions or in legislation."

35. In the instant case, from perusal of rules enacted from time to time which have been referred to in preceding paragraphs, it is apparent that legislature has consistently used the expression "such other manner as the State Government may by general or special order directs". The aforesaid expression appearing in Rule XXII of the Rules framed by the State Government which were notified vide notification dated 4.7.1959 was interpreted by the Supreme Court in AIR 1986 SC 566 and it was held that expression "such other manner as the State Government may by general or special order directs" empowers the State Government to prescribe the mode of disposal of application for grant of licence. The aforesaid expression has been construed by highest executive officers of the State Government as empowering the State Government to prescribe an independent mode of disposal of the application for grant of licence, i.e. by renewal of existing licence. Policy of renewal of existing licence has been in vogue since 2006-07. Thus, construction placed on ambiguous rule by the State Government and continuing for a long period of time is an admissible aid to its interpretation and cannot be disregarded except for cogent reasons especially in view of the fact that the expression "such other manner as the State Government may by general or special order direct" has received approval of the Apex Court in Nandlal Jaiswal's case. We, therefore, hold that expression "or in such procedure which may be prescribed by the State Government from time to time" means that it empowers the State Government to prescribe the mode of disposal of application for grant of licence by renewal of application submitted by existing licensees by applying the principle of "executive construction."

(iii) whether the excise policy for the year 2010-2011 is violative of rule 8 of M.P. Foreign Liquor Rules, 1996 and rule 9 of M.P. Country Spirit Rules, 1995 and is violative of Article 14 of the Constitution of India;

36. It has already been held by us in the preceding paragraphs that language of rule 8(1) (a) of the M.P. Foreign Liquor Rules, 1996 and rule 9 of the M.P. Country

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Spirit Rules, 1995 permits grant of licence by way of renewal. It is noteworthy that even under the new policy, the application is being invited at the first instance from existing licence holder for grant of licence by way of renewal and the licence shall be granted in respect of leftover shops by way of tender. Thus, requirement of inviting applications has not been dispensed with. Licence in respect of each shop is being granted by inviting application. In our considered view renewal of licence is a mode of allotment which is permissible under rule 8 (1) (a) of the M.P. Foreign Liquor Rules, 1996 and rule 9 of the M.P. Country Spirit Rules, 1995. Therefore, the provisions of new policy are not violative of the rules.

(iv) scope of interference in policy matters in exercise of power of judicial review and whether new policy is violative of Article 14 of the Constitution of India;

37. Scope of interference in policy matters in exercise of powers of judicial review is well settled by a catena of decisions. In *T.N. Education Deptt., Ministerial and General Subordinate Services Assn. v. State of T.N.*, (1980) 3 SCC 97 the Supreme Court while noticing the jurisdictional limitation to analyse and to find fault with the policy held that the Court in exercise of its power of judicial review cannot sit in judgment over the policy matters except on limited grounds, namely, whether the policy is arbitrary, mala fide, unreasonable or irrational. Each State is empowered to formulate its own liquor policy.

38. In *Nandlal Jaiswal and others* (Supra) the Supreme Court held that while considering the applicability of Article 14 of the Constitution in case pertaining to trade or business in liquor, the Court would be slow to interfere with the policy laid down by the State Government for grant of licence for manufacture and sale of liquor. More over, grant of licence for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the Government has done unless it appears to be plainly arbitrary, irrational or mala fide. It was further observed that the Court must while adjudging the Constitutional validity of an executive decision relating to economic matter grant a certain measure of freedom or "play in the joint" to the executive. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. In *Delhi Science Forum and others v. Union of India and Another*, (1996) 2 SCC 405 Supreme Court while dealing with a challenge to action of grant of licences by the State Government to non-government companies including foreign collaborated companies for establishing, maintaining and working of telecommunication system of the country pursuant to Government policy of privatization and telecommunication, observed that since parting of privilege exclusively vested with the Government it

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can be questioned only on the ground of bad faith, based on irrelevant or irrational consideration, non-compliance with prescribed procedure or violation of any constitutional or statutory provisions.

39. In *State of Punjab and Ors. V. Ram Lubhaya Bagga and Others*, (1998)4 SCC 117 It was held by Supreme Court that it is not normally within the domain of any court to weigh pros and cons of the policy except where it is arbitrary or violative of any constitutional, statutory or any other provisions of law. The Court would dissuade itself from entering into the realm of policy which belongs to executive. In *Balco employees' Union (Regd.) v. Union of India and Others*, (2002) 2 SCC.333, while dealing with the question of disinvestment of public sector undertaking, it was held that in a case of policy decision pertaining to economic matters, the Court should be very circumspect in conducting any enquiry and investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion. In *Federation of the Railway Officers' Association and Others v. Union of India*, (2003) 4 SCC 298, it was once again reiterated by the Supreme Court that unless policy or action is inconsistent with the Constitution and the laws, or arbitrary or irrational the Court will not interfere with such matter.

40. In a recent decision of Supreme Court rendered in case of *Villianur Iyarkkai Padukappu Maiyam v. Union of India and Others*, (2009) 7 SCC 561, the Supreme Court once again reiterated that in the matters of economic policy the scope of judicial review is very limited and the Court will not interfere with economic policy of the State unless the same is shown to be contrary to any statutory provision or the Constitution. The court cannot examine the relative merits of different economic policies and cannot strike down a policy merely on the ground that another policy would have been fairer and better. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. It was further held that in matters relating to economic issues, the Government while taking the decision has right to 'trial and error' so long it is bona fide and within the limits of the authority. For testing the correctness of a policy the appropriate forum is Parliament and not the Courts. It was further held that there is always a presumption that Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it lacks reasonableness and is not in public interest. The onus is heavy one and has to be discharged to the satisfaction of the Court by bringing proper and adequate material on record.

41. From the aforesaid decisions of the Supreme Court the principles of law which can be culled out can be summarized as follows:

- (i) grant of licence for manufacture and sale of liquor is a matter of economic policy where the Court would be slow to interfere unless the policy is plainly arbitrary, irrational or mala fide.

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(ii) The court must while adjudging the constitutional validity of an executive decision relating to economic matters grant certain measure of freedom or 'play in joint' to the executive.

(iii) The court cannot strike down a policy merely because it feels that another policy would have been fairer or wiser or more scientific or logical.

(iv) Parting of privilege exclusively vests with the Government and the same can be questioned only on the ground of bad faith, based on irrational or irrelevant consideration, violation of any constitutional or statutory provision.

(v) It is not normally within the domain of the Court to weigh the pros and cons of the policy. In case of policy decision on economic matters the Court should be very circumspect and must be most reluctant to impugn the judgment of experts who have arrived at a conclusion.

(vi) Court cannot examine relative merits of different economic policy. In a democracy it is a prerogative of each elected Government to formulate its policy. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review.

(vii) In matters relating to economic issues, the Government has while taking a decision right to "trial and error" as long as both trial and error are bona fide and within limits of the authority.

(viii) Normally there is a presumption that governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness and the burden is a heavy one which has to be discharged to the satisfaction of the Court by bringing proper and adequate material on record.

42. Let us now examine the challenge to the new policy on the ground that same is discriminatory or arbitrary and violative of Article 14 of the Constitution of India. In order to deal with question of infringement of constitutional guarantee contained in Article 14 it would be expedient to notice case law on the subject.

43. In *Cooverjee B. Bharucha* (supra) the Constitution Bench of the Supreme Court while dealing with the provisions of Ajmer Excise Regulations repelled the challenge on the ground of violation of Article 19 (6) of the Constitution of India and held as under:

"Elimination and exclusion from business is inherent in the nature of liquor business and it will hardly be proper to apply to such a business principles applicable to trades which all could carry. The provisions of the regulation cannot be

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attacked merely on the ground that they create a monopoly. Properly speaking, there can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or more persons to the exclusion of the general public. Such, however, is not the case with the business of liquor."

44. Another Constitution Bench of the Supreme Court in *Amar Chandra Chakraborty* (supra) while considering the question whether Section 43 of the Bengal Excise Act under which a licence of a liquor contractor was withdrawn violated Article 14 and 19 (1) (g) of the Constitution, repelled the contention with regard to violation of Article 14 with the following observations:

"Trade or business in country liquor has from its inherent nature been treated by the State and the society as a special category requiring legislative control which has been in force in the whole of India since several decades. In view of the injurious effect of excessive consumption of liquor on health this trade or business must be treated as a class by itself and it cannot be treated on the same basis as other trades while considering Article 14... Principle applicable to trades which all persons carry on free from regulatory controls do not apply to trade or business in country liquor; this is so because of the impact of this trade on society due to its inherent nature."

45. In *Harinarayan Jaiswal* (supra), the Highest bidder in an auction held for granting the exclusive privilege for selling country liquor challenged the order rejecting its bid. It was argued that power retained by the Government to accept or reject any bid without assigning any reason was an arbitrary power and was violative of Article 14 and 19 (1) (g) of the Constitution. It was held as follows:

"The fact that the Government was the seller does not change the legal position once its exclusive right to deal with those privileges is conceded. If the Government is the exclusive owner of those privileges, reliance on Article 19(1) (g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the Government nor can there be any infringement of Article 14, if the Government tries to get the best available price for its valuable rights."

46. In view of the Constitution Bench decision of Supreme Court in *Cooverjee B. Bharucha* (supra) and in *Amar Chandra Chakraborty* (supra) following principles emerge:

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(i) In liquor business, elimination and exclusion from business is inherent, and the principles applicable to other business or trades cannot be applied to trade or business in liquor. Properly speaking there can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or all persons to the exclusion of general public. Such however, is not the case with the business of liquor.

(ii) Trade or business in liquor has from its inherent nature been treated by State or society as a special category and must be treated a class by itself and cannot be placed on same pedestal as other trades while considering the applicability of Article 14.

(iii) Where the State Government frames a policy with the object to secure or ensure maximum revenue for parting with its privilege to deal in liquor, action of the State Government cannot be assailed on the ground that it infringes Article 14.

47. In the backdrop of aforesaid well settled legal position, question of challenge to the new policy on the ground of Article 14 may be dealt with. The challenge to new policy is mainly based on the following grounds:

(1) New policy excludes the petitioners from making an offer at par with existing licensees and therefore the policy is discriminatory, unfair and anti-competitive.

(2) New policy insofar as it provides for renewal of existing licences creates a monopoly in favour of existing licensees.

(3) Clause 9 of the policy which provides that renewal would be allowed when it will generate more than 80% of the estimated revenue for the year 2010-2011 at the district level is arbitrary and is violative of doctrine of legitimate expectation.

48. By adopting the policy of renewal of existing licence the State Government has been able to secure increase of 100% in cumulative growth of revenue which is evident from data supplied by the State Government in the form of table referred to para 16. We find considerable force in the submission of the learned additional Advocate General that clause 9 has been inserted to yield maximum revenue to the State Government. By incorporation of such a provision the State Government has ensured that application for renewal are received even in respect of those shops which are not profitable and the contractors can be prompted to apply for renewal in respect of such shops in order to secure their profit making shops. From the return and the further submissions filed on behalf of the State Government, we find that for the year 2009-10 the State Government has received a sum of Rs.222.16 crores by way of licence fee. For this year i.e. 2010-11 by adopting the policy of renewal of licences, applications for renewal with 20% increase in

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licence fee have already been received in respect of 2236 shops and the State Government would get an amount of at least 450 crores over and above previous years amount received by way of licence fee.

49. Thus, the entire policy is aimed at generation of more revenue in lieu of parting with the privilege to deal in the business of liquor. Thus, the new policy in our considered opinion cannot be said to be arbitrary and irrational. The new policy also does not contravene either the provisions of the Constitution or any statutory provisions, since, elimination and exclusion from business is held to be inherent in the nature of liquor business therefore, the policy cannot be assailed on the ground that it is discriminatory. The argument that the policy creates a monopoly in favour of existing licensees cannot be accepted as the question of monopoly would arise only when a trade which could be carried on by all persons is entrusted by law to one or more person, to the exclusion of general public which is not the case in business of liquor.

50. Considering the fact that while adjudging the validity of an economic policy certain measure of "play in joint" has to be given to the executive and in matters relating to economic issue the Government has right to "trial and error", we find that no case for interference with the new policy is made out. The wisdom and advisability of economic policy are outside the purview of judicial review. More so in view of the fact that Government is guardian of finances of the State, it is expected to protect the financial interest of the State, as held by the Supreme Court in *Tata Cellular vs. Union of India*, (1994) 6 SCC 651.

51. The reliance placed by the learned counsel for the petitioners on the decision of the Supreme Court in *Rasbihari Panda vs. State of Orissa*, AIR 1969 SC 1081 is clearly distinguishable as the same was not the case of trade or business of liquor whereas the trade or business of liquor has to be treated as a class by itself and cannot be treated on the same basis as other trades while considering the challenge on the basis Article 14. Similarly decision relied on by the learned counsel in the case of *Daljit Singh Ahluwalia* (supra) is of no help to the petitioner as it has dealt with the regulations framed for allotment of property under the provisions of Haryana Housing Board Act. The expression "in any other such manner" referred to in the aforesaid case has been interpreted in a different context which cannot be applied to the facts of the present case.

52. Similarly, the decision relied on by the learned counsel for the petitioner reported in *M/s. Parakh Foods Ltd. vs. State of A.P. and another*, AIR 2008 SC 2012 deals with interpretation of expression "such other" used in rule 37D of Prevention of Food Adulteration Act for which principle of ejusdem generis has been applied by the Supreme Court. We fail to appreciate as to how the aforesaid case is of any relevance in interpreting the rule 8(1) (a) of the M.P. Foreign Liquor Rules, 1996 and Rule 9 of the M.P. Country Spirit Rules, 1995.

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53. In view of the above discussion, it cannot be held that new policy is discriminatory, unfair and is unintelligible or that new policy creates a monopoly in favour of existing licensees. On the contrary new policy has been framed with the object to augment the revenue.

(v) whether the Division Bench of this Court in Madan Mohan Chaturvedi v. State of M.P., ILR 2008 MP 2776 has correctly interpreted rule 8(1) (a) of MP Foreign Liquor Rules, 1996

54. Though we agree with the conclusion recorded by the Division Bench with regard to interpretation of Rule 8 of the M.P. Foreign Liquor Rules, 1996 but for different reasons which have already been mentioned while dealing with the issue No.(ii) with regard to interpretation of the rules.

(vi) whether principle reddendo singula singulis can be applied while interpreting rule 8(1) (a) of M.P. Foreign Liquor Rules.

55. Before proceeding to deal with this issue, we may profitably quote the relevant extract with regard to aforesaid principle from page 515 of Principles of statutory Interpretation by Justice G.P. Singh (12th Edition):

"The rule may be stated from an Irish case in the following words: 'where there are general words of description, following an enumeration of particular things such general words are to be construed distributively, Reddendo sigula singulis; and if the general words will apply to some things and not to others, the general words are to be applied to those things to which they will, and not to those to which they will not apply; that rule is beyond all controversy.' Thus, 'I devise and bequeath all my real and personal property to A' will be construed, reddendo singular singulis by applying 'devise' to 'real' property and 'bequeath' to 'personal' property, and in the sentence: 'If any one shall draw or load any sword or gun' the word 'draw' is applied to 'sword' only and the word 'load' to 'gun' only, because it is impossible to load a sword or draw a gun."

56. Thus, the applicability of principle of Reddendo sigula singulis is well illustrated from the relevant extract quoted above. From the perusal of the language employed by the legislature in rule 8(1) (a) and rule 9 of the Rules it is apparent that ingredients of applying the aforesaid rules are not there. Therefore, principle of Reddendo sigula singulis has no application while interpreting rule 8 of the M.P. Foreign Liquor Rules 1996 and Rule 9 of M.P. Country Spirit Rules, 1995.

57. In view of preceding analysis our answer to the questions referred for opinion are as follows:

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(1) Under rule 8(1)(a) of the M.P. Foreign Liquor Rules, 1996 and rule 9 of the M.P. Country Spirit Rules, 1995, it is open to the State Government to renew the licence of existing licensee on such condition, which it may prescribe or invite applications for grant of licence, or deal with grant of licence in such other manner as it may determine.

(2) We agree with the conclusion recorded by the Division Bench of this court in *Madan Mohan Chaturvedi* (supra) however, for different reasons which have already been referred to in preceding paragraphs. The expression "or in any such other manner as the State Government may direct from time to time" will qualify the powers of the Government in granting the licence, and is not required to be read in relation to disposal of applications which cannot be disposed of by draw of lottery.

(3) The new liquor policy which provides for renewal of existing licence with further condition that renewal will take place only when the said renewal will generate more than 80% of the estimated revenue for the year 2010-11 at the district level is a valid policy and does not create any monopoly.

(4) The new policy is a valid policy as the same is not in contravention with rule 8(1) of M.P. Foreign Liquor Rules, 1996. Requirement of inviting the application has not been dispensed with under the new policy. Licence in respect of each shop is being granted by inviting the application. Renewal of licence is a mode of allotment which is permissible under rule 8(1) (a) of M.P. Foreign Liquor Rules, 1996.

(5) The judgment rendered by the Division Bench in *Madan Mohan Chaturvedi* (supra) does not decide the question of vires of policy and this Court has jurisdiction to consider the constitutional validity/statutory validity of the policy. In our view the New Policy is neither violative of Article 14 of the Constitution of India nor contrary to and ultra vires Rule 8(1)(a) of M.P. Foreign Liquor Rules, 1996 and Rule 9 of M.P. Country Spirit Rules, 1995 and Section 62 of the Excise Act, 1915.

58. The reference is accordingly answered. Let the matters be now placed in terms of Rule 9 of Chapter 4 of the High Court of Madhya Pradesh Rules, 2008 for listing before appropriate Bench for disposal of writ petitions.

Order accordingly.

SURESH KUMAR Vs. STATE OF M.P.

I.L.R. [2010] M. P., 815

WRIT APPEAL*Before Mr. Justice R.S. Garg, Acting Chief Justice &**Mrs. Justice Indrani Datta*

17 December, 2009*

SURESH KUMAR

... Appellant

Vs.

STATE OF M.P. & ors.

... Respondents

A. Service Law - Civil Services (General Conditions of Service) Rules, M.P. 1961, Rule 12(1)(a) & 12(1)(f) - Fixation of seniority - *Petitioners' probation period extended and they were confirmed after the extended period - The juniors of the petitioner who were selected in a subsequent batch completed probation in time and they were granted seniority above the petitioners - Held - There is a marked and sharp distinction between selection, appointment and confirmation - Such direction could not be kept in oblivion by the State Government - Petitioners could not be awarded seniority below the persons who have been selected/appointed under the subsequent selection process.* (Para 10)

क. सेवा विधि - सिविल सेवा (सेवा की सामान्य शर्तें) नियम, म.प्र., 1961, नियम 12(1)(ए) व 12(1)(एफ) - ज्येष्ठता का नियतन - याचियों की परीक्षा अवधि बढ़ायी गई और बढ़ायी गई अवधि के पश्चात् उन्हें स्थायी किया गया - याची से कनिष्ठ कर्मियों ने, जो पश्चात्पूर्वी बैच में चयनित हुए थे, परीक्षा समय पर पूरी की और उन्हें याचियों से ऊपर ज्येष्ठता प्रदान की गयी - अभिनिर्धारित - चयन, नियुक्ति और स्थायीकरण के बीच स्पष्ट और सुनिश्चित विभेद है - राज्य सरकार द्वारा ऐसे निर्देश को विस्मृत नहीं किया जा सकता - याचियों को उन व्यक्तियों के नीचे ज्येष्ठता प्रदान नहीं की जा सकती जो पश्चात्पूर्वी चयन प्रक्रिया के अन्तर्गत चयनित/नियुक्त किये गये हैं।

B. Service Law - Civil Services (General Conditions of Service) Rules, M.P. 1961, Rule 12(1)(a) & 12(1)(f) - Fixation of seniority - Rule 12(1)(a) and Rule 12(1)(f) do not operate different fields - These rules are to be read in juxta position. (Paras 8 to 10)

ख. सेवा विधि - सिविल सेवा (सेवा की सामान्य शर्तें) नियम, म.प्र., 1961, नियम 12(1)(ए) व 12(1)(एफ) - ज्येष्ठता का नियतन - नियम 12(1)(ए) और नियम 12(1)(एफ) भिन्न क्षेत्रों में कार्यान्वित नहीं होते - इन नियमों को साथ-साथ पढ़ा जाना चाहिए।

*M.P.S. Raghuvanshi, for the appellant.**R.D. Jain, A.G., with P.N. Gupta, G.A., for the State.***J U D G M E N T**

The Judgment of the Court was delivered by
R.S. GARG, ACTING C. J. :- This judgment shall dispose of Writ Appeal No. 510/

SURESH KUMAR Vs. STATE OF M.P.

2009 (Suresh Kumar vs. The State of M.P. & others) and Writ Appeal No. 511/2009 (Sandeep Kumar Mawkin vs. The State of M.P. & others).

2. By common judgment dated 6/10/2009 the learned Single Judge disposed of W.P. No. 5056/05(s) {Suresh Kumar vs. State of Madhya Pradesh} and W.P. No. 5057/05 (s) {Sandeep Kumar Vs. State of Madhya Pradesh. The learned Single Judge dismissed the petitioners' writ petitions, therefore, the appellants have filed these writ appeals before us under Section 2 (1) of Madhya Pradesh Uchcha Nyayalaya {Khand Nyaypeeth Ko Appeal} Adhmiyam, 2005.

3. Learned counsel for the petitioners/appellants submitted that each of the petitioner had come to the Court. with a short submission that as they could not complete the probation period successfully and the same had to be extended, the State Government might have a right under Rule-12 (1) (f) of Civil Services (General Condition of Services) Rules, 1961 {hereinafter referred to as "Rules of 1961"} to fix the seniority but the State Government could not place the petitioners below the candidates who were selected in subsequent selections held in 1995, 1996 and/or 1997. It is also contended that as the State Government itself had extended the period of probation, each of the petitioner was certainly entitled to the increments which they had successfully earned while discharging their duties as probationers.

4. Placing reliance upon Rule-12 (1) (a) and Rule 12 (1) (f) of Rules of 1961 it was submitted that the Rules are to be read in juxtaposition and only then a reasonable conclusion should be arrived at. It is submitted that persons appointed as a result of earlier selection would always be senior to those who are appointed as a result of a subsequent selection. Drawing a distinction between the selection and confirmation, it is submitted that the petitioners if were selected in the selection process of 1994, they could be confirmed w.e.f. 23/7/1997 but they could not be taken to be selected in the selection process of 1997.

5. Shri Jain, learned Advocate General submitted that Rule 12 (1) (a) and Rule 12 (1) (f) of Rules of 1961 operate in-different fields. According to him, if there is no question of the probation period then the seniority is to be maintained in accordance with Rule 12(1) (a) but if there is a question of probation, the successful completion of the same and/or extension of the same then Rule 12 (1) (a) would have no application.

6. The short question for consideration thus is that Rule 12 (1) (a) and Rule 12 (1) (f) of Rules of 1961 are to be read in juxtaposition or Rule 12 (1) (a) and Rule 12 (1) (f) operate differently and would adversely affect the seniority of a person who was appointed in the earlier selection process and such a person would be liable to be placed below the persons who are appointed in subsequent selection process.

7. For proper appreciation of the dispute it would be necessary to look into the language of Rule 12 of Rules of 1961:-

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"12.Seniority.-The seniority of the members of a service or a distinct branch or group of posts of that service shall be determined in accordance with the following principles,viz,-

(1) Seniority of Direct Recruits and Promotees.-(a) The seniority of persons directly appointed to a post according to rules shall be determined on the basis of the order of merit in which they are recommended for appointment irrespective the date of joining. Persons appointed as a result of an earlier selection shall be senior to those appointed as a result of a subsequent selection.

(b) Where promotions are made on the basis of selection by a Departmental Promotion Committee, the seniority of such promotees shall be in the order in which they are recommended for such promotion by the committee.

(c) Where promotions are made on the basis of seniority subject to rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where however a person is considered as unfit for promotion and is superseded by a junior, such person shall not, if subsequently found suitable and promoted, take seniority in the Higher grade over the junior persons who had superseded him.

(d) The seniority of a person whose case was deferred by the Departmental Promotion Committee for lack of Annual Character Rolls or for any other reasons but subsequently found fit to be promoted from the date on which his junior was promoted. Shall be counted from the date of promotion of his immediate junior in the select list or from the date on which he is found fit to be promoted by the Departmental Promotion Committee.

(e) The relative seniority between direct recruits and promotees shall be determined according to the date of appointment/promotion order.

Provided that if a person is appointed/promoted on the basis of roster earlier than his senior, seniority of such person shall be determined according to the merit/select/fit list prepared by the appropriate authority.

(f) If the period of probation of any direct recruit or the testing period of any promotee is extended, the appointing authority shall determine whether he should be assigned the same seniority as would have been assigned to him if he had completed the normal period of probation testing period successfully, or whether he should be assigned a lower seniority.

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(g) If orders of direct recruitment and promotion are issued on the same date, promotee persons enblock shall be treated as senior to the direct recruits."

8. From perusal of Rule 12 (1) (a) of Rules of 1961, it would clearly appear that seniority of a person will have to be determined in order of merit in which he is recommended for appointment irrespective of date of joining. Persons appointed as a result of an earlier selection shall be senior to those appointed as a result of subsequent selection. A perusal of Rule 12 (1) (a) of Rules of 1961 would make it clear that it refers to inter se seniority of the persons which is based upon the order of merit in which they are recommended by the concerned Selection Board. It would also be clear from Rule 12 (1) (a) that a person appointed in the earlier selection process shall be senior to those appointed as a result of a subsequent selection. From the language it would clearly appear that if a person is appointed in the earlier year then he would always be senior to a person appointed in the latter year. However, Rule 12 (1) (a) of the Rules of 1961 would be subject to certain disciplinary actions, which can be taken and the seniority of such person may be adversely affected. In any case, if there are no adverse reports nor there is any disciplinary action the seniority is to be maintained vertically and horizontally. The horizontal seniority is to be maintained in order of the merits in which they are recommended for their appointment while the vertical seniority is to be maintained in order of selection of the year by holding that the person who was appointed as a result of an earlier selection shall be senior to those appointed as a result of a subsequent selection.

9. The horizontal seniority, however is subject to Rule 12 (1) (f) of Rules of 1961 which clearly provides that if the period of probation of any direct recruit or the testing period of promotee is extended, the appointing authority shall determine whether he should be assigned the same seniority as would have been assigned to him if he had completed the normal period of probation/testing period successfully or whether he should be assigned a lower Seniority. A perusal of Rule (f) would again make it clear that if the probationer completes the period of probation or testing period in case he is a promotee then his original seniority as determined in the order of merits by the selecting authority shall be maintained but in case he is unable to complete the probation period successfully and the same is required to be extended then the appointing authority shall be entitled to decide the question of seniority. In such a case the appointing authority can restore the original seniority or may place such person to some lower seniority. In case the original seniority is maintained then that would be end of the matter but in a case where lower seniority is assigned, the question which assumes importance is whether such assignment of the seniority would adversely affect the selection process.

10. At this stage, it would be necessary to observe that a person who is directly appointed in order of merit in which they are recommended for appointment

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they have their inter se seniority, their seniority cannot be compared with any person who has been appointed in a subsequent selection process. The authority only has a right to fix the seniority of such probationer who could not complete his probation period successfully within his own cadre or within the persons who had been selected in the same selection process. If the arguments of learned Advocate General is accepted, the same is likely to create an administrative anarchy because in a given case a person may complete the probation period successfully within one year and the other may not complete the same within two years and in between if another selection process takes place and the other person of the subsequent selection process completes the probation in less than one year and is confirmed then he is likely to become senior to the person who still had some valid period of probation. It is also to be seen that there is always a distinction between appointment and confirmation. Once Public Service Commission or the appointing authority undertakes the process for selection then for that class this is the end of matter. After such selection the persons would be appointed on probation or permanently. In case persons are appointed on probation then they would be required to complete the period of probation successfully and on completion of the period they would not be reappointed or reselected but they would be confirmed on the post. If there is a marked and sharp distinction between selection, appointment and confirmation then such distinctions could not be kept in oblivion by the State Government and the petitioners could not be awarded seniority below the persons who had been selected/appointed under the subsequent selection process.

11. Insofar as the order of Government relating to non-granting of increment is concerned, in our opinion the said order would also require to be quashed because each of the petitioner had passed the examination within the extended period.

12. The appeals are allowed, it is hereby held that each of the petitioner would be entitled to count his seniority in the cadre of selection process of 1994 but however they would stand confirmed from 23/7/1997 and the State would be entitled to place them in accordance with Rule 12 (1) (f) of Rules of 1961. Each of the petitioner would also be entitled to the increments which they had earned during the period of probation.

13. Appeals to the extent indicated above are allowed with a further direction to the State Government to re-frame the seniority list.

14. There shall be no order as to costs.

Appeal allowed.

AMBO EXPORTS LTD, KOLKATA Vs. SHRI ISHAR AGRO LTD.

I.L.R. [2010] M. P., 820

COMPANY APPEAL*Before Mr. Justice S.L. Kochar & Mrs. Justice Manjusha P. Namjoshi*

12 August, 2009*

AMBO EXPORTS LTD, KOLKATA

... Appellant

Vs.**SHRI ISHAR AGRO LTD. & anr.**

... Respondents

Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), Section 20(1) - Winding up of sick companies - Highest bid not accepted - Official Liquidator invited tenders for sale of assets of sick industry - Resp. No.2 quoted highest amount Rs. 8.01 Crores which was approved by SBI and IDBI as well as of Government - After that, appellant prayed for grant of opportunity to participate in the bid and made offer of Rs. 8.05 Crores - Held - No allegation of fraud or collusion against Resps. - Proceedings of sale were going on for a long time but appellant did not participate before Official Liquidator - Final bid of Resp.No.2 cannot be rejected by a mere increase of Rs. 4 Lacs by appellant - Intervention was made to forestall the transaction rather than to become a bona fide tenderer at proper time - Application rightly rejected - Appeal dismissed. (Paras 6 & 7)

रुग्ण औद्योगिक कम्पनी (विशेष उपबंध) अधिनियम, 1985 (1986 का 1), धारा 20(1) - रुग्ण कम्पनियों का परिसमापन - सबसे ऊँची बोली स्वीकार नहीं - शासकीय समापक ने रुग्ण उद्योग की आस्तिओं के विक्रय के लिए निविदाएँ आमंत्रित कीं - प्रत्यर्थी क्र. 2 ने 8.01 करोड़ रुपये की उच्चतम राशि का कुटेशन दिया जिसे एस.बी.आई. और आई.डी.बी.आई. के साथ-साथ सरकार द्वारा भी अनुमोदित किया गया - उसके बाद अपीलार्थी ने बोली में भाग लेने के लिए अवसर प्रदान करने की प्रार्थना की और 8.05 करोड़ रुपये का प्रस्ताव दिया - अभिनिर्धारित - प्रत्यर्थियों के विरुद्ध कपट या दुरभिसंधि का कोई अभिकथन नहीं - विक्रय की कार्यवाहियाँ लम्बे समय से चल रही थीं किन्तु अपीलार्थी ने शासकीय समापक के समक्ष भाग नहीं लिया - प्रत्यर्थी क्र. 2 की अन्तिम बोली अपीलार्थी द्वारा 4 लाख रुपये की वृद्धि मात्र से अस्वीकार नहीं की जा सकती - उचित समय पर सद्भाविक निविदाकार बनने की बजाए संव्यवहार रोकने हेतु मध्यक्षेप किया गया - आवेदन उचित रूप से नामंजूर - अपील खारिज।

Cases referred :

(2008) 144 Company Cases 391, (2000) 102 Company Cases 671, (2007) 5 SCC 745, (2001) 6 SCC 2131, AIR 1974 SC 1331, (2008) 9 SCC 299, AIR 1997 SC 215, AIR 1965 SC 834.

G.M. Chaphekar with Shri Sanyal, for the appellant.

P.K. Batta, Official Liquidator, for the respondent No.1.

Kishore Shrivastava with V.K. Jain, for the respondent No.2.

AMBO EXPORTS LTD, KOLKATA Vs. SHRI ISHAR AGRO LTD.**J U D G M E N T**

The Judgment of the Court was delivered by S.L. KOCHAR, J. :-Appellant has filed this appeal against the impugned order dated 05.08.08 passed by the learned Company Court in Company Petition No. 19/02 whereby OLR No. 25/08 has been accepted and interim application No. 4938/08 (Annexure P/1 to this appeal) filed by the appellant for grant of permission to intervene to participate in further negotiations and proceedings for the purposes of purchasing the property of respondent No. 1 herein (a Company in liquidation) has been dismissed.

2. Short resume of the facts necessary for resolving the controversy arises as follows:-

A reference to this High Court was made vide letter dated 14.06.2000 by the Registrar of Board for Industrial and Final Reconstruction, New Delhi (for brevity BIFR) to record opinion under section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 with Respondent No. 1 -M/s Ishar Agro Ltd. be wound-up and to take further action in accordance with the provisions of law.

3. Upon the said reference, Official Liquidator (for short the O.L) was appointed and he took possession of assets of respondent No. 1-Company. O.L. submitted O.L.R. No. 21/05 dated 31.03.05 for grant of permission to invite tenders for sale of land, building, plant and machinery etc. of Respondent No. 1-Company. The O.L. also prayed for formation of Assets Sales Committee of representatives of secured creditors and to obtain report of Government approved valuer. This prayer was accepted by the learned Company Court.

4. Tenders were invited for sale of assets of respondent No. 1-Company and on 11.08.05, highest offer of Rs. 3.48 crores (Three Crore Forty Eight lac) was received. The Court was not satisfied with the offer and directed the Sale Committee to proceed for fresh sale by publication in more news papers. On 25.08.05, highest offer of Rs. 4.27 crores (Four crore twenty seven lac) was received. Learned Company Court did not sanction the sale of property and O.L. was directed to obtain expert opinion regarding value of property with a view to find out as to how best maximum price can be fetched in the given circumstances and then to invite fresh tenders from public at large. In compliance of this order, the O.L. sent letter to SOPA which had widely circulated for calling offers by the O.L. and in pursuance thereto, five parties submitted their offers. They are Ishar Engineering, Dhan Laxmi Solvex Pvt. Ltd, (Respondent No. 2 herein), Shajapur Solvent Extraction, Kartik Solvex Pvt.Ltd and Pratibha Exims Pvt. Ltd.

5. However, learned Company Court was not satisfied with the offers and directed the committee to hold negotiations with these tenderers to receive more bid amount. On 07.04.08 learned Company Court issued direction to the Sale

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Committee to hold negotiations with the bidders whose names were mentioned in O.L.R. No. 11/08 dated 07.08.08 with a view to fetch maximum price to secure the interest of creditors. Learned Court also directed every tenderer to deposit E.M.D. of Rs. 25,00,000 (Twenty five lacs). The tenderer deposited the E.M.D. amount and took part in negotiation before the Sale Committee and in these negotiation proceedings Respondent No. 2 M/s Dhan Laxmi Solvex raised final offer from Rs. 6.03 crores to that of Rs. 8.01 crores (Eight crore one lac). Other tenderer also raised the price, but they all were less than Rs. 8.01 crores (Eight crore one lac).

6. Learned Company Court called the representatives of Financial Institutions i.e. State Bank of India and IDBI in person to ascertain their views about the price. They appeared in person and submitted that the offer made by respondent No. 2 was reasonable and commensurate with the valuation of the assets. The Court also called the views of Government regarding sale/transfer of land, leased out to the Company in liquidation. The O.L. submitted the details after receiving the same from the State Government. They were filed in O.L.R.No. 32/08 dated 12.06.08.

7. When the matter was pending before the learned Company Court, whether the offer of Respondent No. 2 M/s Dhan Laxmi Solvex Pvt. Ltd. should be accepted or not, the appellant filed I.A.No. 4938/08 for grant of permission to intervene in the sale-proceedings.

8. The appellant contended in the I.A. that he had send a letter to Stress Assets Stabilization Funds Committee (for short SASF) and made offer of Rs. 6.01 crores, a copy whereof dated 02.07.07 was sent to the O.L., but the O.L. had not called them to participate in negotiation. Before the learned Company Court appellant prayed for grant of opportunity to participate in the bid and made offer of Rs. 8.05 crores (Eight crore five lac) as against Rs. 8.01 crores (Eight crore one lac), already offered by Respondent No. 2. Counsel for the appellant also submitted before the learned Company Court that the appellant is ready to raise more amount, if permitted to bid.

9. The O.L. in his reply to the I.A. denied receiving of such letter sent by either the appellant or the SASFC, therefore, there was no occasion for him to invite the appellant for negotiation. The respondents opposed the prayer of the appellant to allow him to bid and submitted that the appellant did not take any part at any point of time in last three years, when twice tenders were invited from public at larger after wide publication.

10. Learned Company Court, after hearing both the parties at length dismissed the application of the appellant for grant of permission to intervene and take part in the bid mainly on the ground that since last three years, tenders were being invited and matter was widely published in various news-papers, but no tender

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was submitted by the appellant and no documentary proof was filed to show the sending of offer to O.L. and the Court cannot convert itself into an auctioneering for acceptance or rejection of a tender at the instance of one person who had come directly to the Court. In the opinion of learned Company Court, it is clear case of business rivalry inter-se between two businessmen to forestall the transaction rather than to become a bona fide tenderer at proper time. Learned Court has also observed that all effective measures, as could be possible were taken to fetch highest sale price which is acceptable to all secured creditors who have given their consent for its acceptance and by the impugned order, accepted the OLR No. 25/08. Learned court directed the O.L. to execute necessary transfer deeds in relation to the properties which were the subject matter of sale in favour of successful bidder-Respondent No. 2. It is this order which is under challenge in this appeal. We have heard learned counsel for the parties and perused the entire record.

11. Learned counsel for the appellant has made his submissions as under:-

That on 02.09.07, Stressed Assets Stabilization Fund (SASF) had sent a proposal of the appellant to IL regarding proposal of the appellant to purchase assets of the company worth Rs. 6.01 crores which was higher than the previous bids received at the time of last auction in the month of August, 2006, but the OL has not considered this letter (filed along with application for intervention). On 09.05.08, the appellant has also directly sent proposal to the OL for purchasing the entire movable and immovable property of respondent No. 1 for Rs. 8.05 crores, but the OL has not considered these letters and also did not apprise the learned Company Court for the reasons best known to him. Relying on the Supreme Court judgments passed in the cases of *FCS Soft Ware Solution Ltd. V/s Law Medical Devices Ltd. and Ors* [(2008)144 Company Cases 391 (Supreme Court)] and *Divya Manufacturing Co. (P). Ltd. V/s Union of India and others* [(2000)102 Company Cases Page 67] urged that approach of the Company Judge should have been to get highest price so as to satisfy the maximum claims against the company in liquidation and even if bid has been finalized the Company Judge or in appeal the Appellate Court can accept highest offer for purchasing the assets of the company. Learned Company Court expressed its dissatisfaction on the manner in which the auction sale was conducted by the OL and directed him to return the earnest money of the tenderers. The OL was also directed to consult some expert as to how the property in question should be sold in best possible way. The O.L. despite letter dated 02.07.07 sent to him by SASF did not call the appellant to participate in negotiations and also did not apprise the learned Company Court about his offer.

12. Learned counsel has also pointed out that in this appeal on 12.08.08, both counsel for the parties sought time to seek further instructions from their respective clients to increase the purchase amount and learned counsel for the Respondent

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undertook not to get the documents executed in favour of his client. On this date, the Court was not apprised by the counsel for the Respondent No. 2 and O.L. about handing over the possession of the property of company to respondent on 07.08.08 and deposit of entire sale amount on 06.08.08, just on the next day of passing of impugned order (05.08.08) by the learned Company Court. On 10.09.08, counsel for the appellant has apprised the Court about offer of Rs. 8.75 crores of his client for purchasing the assets which was 74,00,000/- (Seventy four lac) higher than the bid finalized by the learned Company Court and the Respondent No. 2 was given opportunity to increase the offer, but he declined. Appellant was directed to deposit the amount of Rs. 8.75 crores (eight crore seventy five lac) to judge his bona fides and he obeyed the order of this Court and deposited this amount in CCD of the High Court, receipt whereof has already been filed. It is also submitted that the OL has acted in hasty manner and without executing the documents as directed by the learned Company Court, granted possession of the Solvent Extraction Plant and allowed the respondent No. 2 to bring it into operation. According to the learned counsel in the case of *F.S. Soft Ware* (supra) even after execution of sale-deed, handing over of possession and incurring of expenses by the purchaser, the Court set aside the sale and accepted the highest offer granting soletium to the purchaser for his trouble and disappointment. In sum and substance, the argument of the learned counsel for the appellant is that paramount consideration for sale of assets of the company under liquidation must to fetch the highest price and the appellant has increased a handsome amount of 74,00,000/- (Seventy Four lac) against which Respondent No. 2 has declined to increase the offer, therefore, the impugned order may be set aside and offer of the appellant be accepted.

13. In reply, learned counsel for the Respondent No. 2 has urged as under:-

That after, acceptance of offer of Respondent No.2, the O.L. has given possession of the factory and normally in such case, possession is being given first in time and thereafter, the documents are to be executed, therefore, the O.L. has not committed any breach of law especially when there is no provision of law that first document of transfer or sale should be executed and thereafter, possession must be given. Possession was given prior to passing of interim order by this Court dated 12.08.08 and again on 10.09.08 directing the respondents not to execute the documents of transfer in favour of respondent No. 2. The respondent No. 2 has invested 8.40 crores in addition to the bid amount and commenced production in the plant. On 07.04.08, learned Company Court had directed the OL-Respondent No. 1 to call those five parties for negotiation mentioned in OLR No. 11/08, therefore, the OL could not calla other person/party to participate in the negotiation and if the appellant was interested, he should have filed an application for recalling of the order and granting him permission to take part in negotiation, but he did not do so and impugned final order was passed by the

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learned Company Court and offer of respondent No. 2 has been accepted. About offer of Rs. 6.01 crores. SASF has not filed any document before the Company Court showing receipt of application of the appellant regarding his interest in the purchase of assets and offer of Rs. 6.01 crore. The appellant was not a party to the bid and also in negotiation, therefore, has no right to file appeal. Learned counsel has placed reliance on the Supreme Court judgment passed in the case of *B. Arvind Kumar V/s Government of India and others* [(2007)5 SCC 745], wherein it is held that when an auction purchaser derives title on confirmation of sale in his favour and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the Court is contemplated or required. The inadequacy of price could not be a ground for setting aside the sale by Court when there is no fraud or material irregularity in the conduct of Court's auction is found. Learned counsel has also placed reliance on the Apex Court pronouncements in the cases of *Rajender Singh V/s Ramdhar Singh and others* [(2001)6 SCC 213], *M/s Kayjay Industries (P).Ltd V/s M/s Asnew Drums (P).Ltd* (AIR 1974 SC 1331), *Valji Khimji & Co. V/s Official Liquidator* [2008]9 SC 299], *K. Basavarajappa V/s Tax Recovery Commissioner* [AIR 1997 SC 215 and *Laxmi Devi V/s Mukund Kanwar and others* [AIR 1965 SC 834].

14. Having heard learned counsel for the parties and after perusing the entire record, as well giving our anxious consideration over the issue, we do not find any merit for interference in this appeal.

15. It is evident from the impugned order and the record of the learned Company Court that the matter was pending for sale of assets of the company under liquidation since 2005 and from time to time the Company Court has taken effective, adequate legal steps for fetching highest price for assets of the company. The Sale Committee was constituted of representatives of the secured creditors. valuation report of the company assets was called from authorized experts, publication was made for inviting tenders and as many as five companies (parties) made offers. The Company Court was not satisfied by offer in secret tenders, directed the OL to negotiate with the parties with a sole intention to fetch maximum price to satisfy the creditors.

16. The proceeding of sale was going on since 2005, but the appellant did not participate before the OL and filed intervention application before the Company Court with a contention that SASF sent letter dated 02.07.07 to the OL informing that the appellant is interested in purchasing the assets for Rs. 6.01 crores which was the highest bid by that time amongst all the participants, but failed to file any proof about sending of this letter to OL and the OL has denied receipt of this letter. If really the letter was sent, the appellant could have kept proof for sending the letter. The appellant has filed another letter dated 09.05.08 sent to the OL in which he has expressed his desire to purchase the assets of the company for Rs. 8.05 crores. It is pertinent to mention here that the intervention application

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was also filed on 09.06.08 before the learned Company Court, therefore, it creates doubt on the bona fide of the appellant. No proof has been filed by the appellant to show as to when the application was sent to the OL. It does not contain any acknowledgment. In intervention application, he made offer of Rs. 8.05 crores (Eight crore five lac), only Rs. 4,00,000/- (Four lacs rupees) more than the offer of Respondent No. 2 as accepted by the learned Company Court.

17. In the intervention application as well as before this Court, no allegations have been levelled by the appellant in regard to fraud or collusion against the respondents, therefore, merely by increase of Rs. 4,00,000/- (four lacs rupees), final bid of Respondent No. 2 cannot be refused and we find substance in the observation of the learned Company Court that intervention was made by the appellant to forestall the transaction, rather than to become a bona fide tenderer at a proper time on account of business rivalry.

In the case of *FCS Software* (supra), fresh auction was called even after confirmation of sale, because certain facts which were necessary to be brought to the notice of intending purchasers relating to valuation of movable and immovable properties, fixation of reserve price, non-inventory of plant and machinery were not set out in proclamation of sale nor disclosed at the time of sale notice, because of which the participants could not make proper and maximum offer. Such is not the situation in the instant case. Learned Company Court had taken all required effective legal steps for fetching maximum price and confirm the sale after satisfaction of the Committee and creditors. There is no dispute on legal position that for fetching maximum price, the order of confirmation of sale can be set aside by the Company Court and the Appellate Court can also exercise his power, if no effective steps were taken or there was fraud and collusion between the parties. In the instant case, neither of both elements is present. Mere highest offer of Rs. 4,00,000/- four lac) before the Company Court and increase of offer before the Appellate Court after more than one month would not be a ground for interference in appeal in view of the Supreme Court judgment passed in the case of *Valaji Khimji* (supra) when there is no fraud or collusion can be inferred or alleged.

18. It is pertinent to mention here that the OL has acted in hasty manner by giving possession of the assets of the company to Respondent No. 2 immediately on the next day of passing of impugned order by the learned Company Judge in favour of Respondent No. 2 and he had not apprised the Appellate Court when the appeal was heard at motion stage itself on 12.08.08. in presence of both the respondents and learned counsel for the Respondent No. 2 could not undertake not to get the documents executed in favour of his client. Probably if this Court would have been apprised of handing over of possession, the interim order would not have been passed or the respondent No. 2 could have been restrained from incurring expenditure for bringing the company into order.

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19. In view of the aforesaid legal and factual position and the appellant has not controverted the averments of respondent No. 2 about taking of possession and incurring expenditure, this Court is of the opinion that there is no point in favour of the appellant to interfere in the impugned order. The appeal is, therefore, dismissed. Appellant is allowed to take back the cash amount of Rs. 8.75 crores (eight crore seventy five lac) in accordance with the provisions of law as may be applicable in this regard.

Appeal dismissed.

I.L.R. [2010] M. P., 827

WRIT PETITION

Before Mr. Justice Sanjay Yadav

26 November, 2009*

RAMESH SINGH THAKUR

... Petitioner

Vs.

JABALPUR DEVELOPMENT AUTHORITY & ors.

... Respondents

A. Constitution, Article 226 - Multiple relief in one writ petition - Writ petition challenging show cause notice for removal from service and also seeks direction to release annual increment and fixation of pay - The grievances pre-existed when the petitioner was subject to show cause notice - Unless the law prohibits, petitioner has right to claim multiple relief. (Para 11)

क. संविधान, अनुच्छेद 226 - एक रिट याचिका में बहुविध अनुतोष - सेवा से हटाए जाने के लिए कारण बताओ सूचना पत्र को चुनौती देने वाली रिट याचिका में वार्षिक वेतन वृद्धि देने और वेतन नियत करने के निदेश भी चाहे गये - जब याची को कारण बताओ सूचनापत्र दिया गया परिवेदना उससे पूर्ववर्ती थी - जब तक विधि द्वारा निषिद्ध न हो याची को बहुविध अनुतोष का दावा करने का अधिकार है।

B. Constitution, Article 226 - Show cause notice - Writ petition maintainable - When a show cause notice is ex facie a nullity or totally without jurisdiction then it can be interfered under Article 226 - Petitioner questions the authority of the C.E.O. to take any disciplinary action - Since jurisdiction of C.E.O. is being questioned, the petition under Article 226 is maintainable. (Paras 12 to 14)

ख. संविधान, अनुच्छेद 226 - कारण बताओ सूचना पत्र - रिट याचिका पोषणीय - जब कारण बताओ सूचना पत्र प्रत्यक्षतः अकृतता या पूर्णतः बिना अधिकारिता का हो तब अनुच्छेद 226 के अन्तर्गत उसमें हस्तक्षेप किया जा सकता है - याची ने कोई अनुशासनिक कार्यवाही करने के मुख्य कार्यपालक अधिकारी के प्राधिकार को चुनौती दी - चूँकि मुख्य कार्यपालक अधिकारी की अधिकारिता को चुनौती दी जा रही है, इसलिए अनुच्छेद 226 के अन्तर्गत याचिका पोषणीय है।

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C. Service Law - Development Authority Services (Officer and Servants) Recruitment Rules, M.P. 1987, Rules 2(b), 8 & 53 - Show cause notice for disciplinary action issued by C.E.O. - Held - C.E.O. is nowhere shown to be a disciplinary authority - No delegation of power in his favour - Action initiated by C.E.O. without authority - Show cause notice quashed - Petition allowed. (Paras 15 to 17)

ग. सेवा विधि - विकास प्राधिकरण सेवा (अधिकारी और कर्मचारी) भर्ती नियम, म.प्र. 1987, नियम 2(बी), 8 व 53 - मुख्य कार्यपालक अधिकारी द्वारा अनुशासनिक कार्यवाही के लिए कारण बताओ सूचना पत्र जारी किया गया - अभिनिर्धारित - मुख्य कार्यपालक अधिकारी का अनुशासनात्मक प्राधिकारी होना कहीं भी दर्शित नहीं - उसके पक्ष में शक्ति का कोई प्रत्यायोजन नहीं - मुख्य कार्यपालक अधिकारी द्वारा आरम्भ की गयी कार्यवाही प्राधिकार विहीन - कारण बताओ सूचना पत्र अभिखंडित - याचिका मंजूर।

D. Service Law - The appointment in favour of the petitioner being not obtained by misrepresentation or fraud, creates vested rights in favour of petitioner and cannot be taken away unless & otherwise in accordance with law. (Para 19)

घ. सेवा विधि - याची द्वारा नियुक्ति दुर्यपदेशन या कपट द्वारा अभिप्राप्त न किये जाने से, याची के पक्ष में निहित अधिकार सृष्ट करती है और छीनी नहीं जा सकती जब तक विधि अनुसार और अन्यथा न हो।

Cases referred :

AIR 1979 SC 1022, (2007) 4 SCC 566, (2004) 8 SCC 788, (1996) 1 SCC 327, AIR 2004 SC 1467.

V.S. Shrotri with A.P. Shrotri, for the petitioner.

Sujoy Paul with Piyush Jain, for the respondents.

ORDER

SANJAY YADAV, J. :-With consent the matter is heard finally.

2. Correctness of the show cause notice dated 24-3-1999 is being questioned in this petition. By said show cause notice the petitioner is called upon as to why an action under the provisions of Madhya Pradesh Civil Service (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as 'Rules of 1966') be not taken and the petitioner be removed from service because the appointment of the petitioner on compassionate ground has been rendered invalid.

3. The relevant facts giving rise for the issuance of said notice are that the petitioner by order dated 9-11-1982 was appointed as Assistant Tractor Driver on contingency on a fixed pay of Rs. 75 in grade Rs. 75-140 on temporary basis. Thereafter by order dated 11-4-1984 he was promoted as Assistant Grade III in grade Rs. 445-635 and by order dated 16-1-1991 he was promoted as Assistant Grade II in grade Rs. 95-1530. The services of the petitioner thereafter were regularized by order dated 22-3-1997 with effect from 10-11-1984.

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4. That in the year 1988, wife of petitioner's brother Hukum Singh; the said Hukum Singh was in the employment of respondent as tractor driver and died in harness, approached the authorities with a plea that the consent which she gave in favour of the petitioner for his appointment on compassionate ground be treated as withdrawn and she be given the appointment in lieu of the death of her husband. The said representation came to be rejected on 4-7-1988 on the ground that the benefit of appointment on compassionate ground can be given only to one person in a family.

5. Smt. Gopi Bai, widow of late Hukum Singh, thereafter approached the Labour Court by way of application under the M. P. Industrial Relations Act. The application was allowed on 6-1-1990, whereby, the respondent/authority was directed to appoint her on compassionate ground and gave them the liberty to deal with the petitioner.

6. This order, however, was set aside in appeal preferred by the respondents. The matter thereafter travelled before this Court in W. P. No. 1744/91 wherein without dealing with the petition on merit disposed of on the basis of the statement by respondent that in the interregnum period i.e. from the date of order dated 6-1-1990 and filing of the petition, the said Smt. Gopi Bai was appointed. This order though lead to the disposal of writ petition but the order by Labour Court which was set aside by Appellate Court was not revived.

7. The respondent however taking cue from the order of labour Court issued the impugned show cause notice.

8. Questioning the said order it is urged by learned senior counsel for the petitioner that, the appointment of the petitioner nowhere disclosed that he was appointed on compassionate ground. It is contended that since the petitioner was not appointed on compassionate ground, the respondents wrongly addressed themselves to facts not in existence and issued the show cause notice. It is further contended that the petitioner being appointed by the Board of the Authority, the Chief Executive Officer had no authority under law to have taken action against the petitioner. The learned counsel further contends that the respondents were not justified in placing reliance on the order of Labour Court which was not in existence. The learned counsel further urged that since there was no misconduct by the petitioner, he could not be subjected to the proceedings under the Rules of 1966. The petitioner places reliance on the judgment rendered by the Supreme Court in *Union of India v. J. Ahmed* : AIR 1979 SC 1022 and *Inspector Prem Chand v. Govt. of NCT of Delhi* : (2007) 4 SCC 566 for the proposition that there was no act of misrepresentation as would tantamount to misconduct. And for the proposition that the exercise of administrative power shall stand vitiated if there is manifest error of record, on the judgment rendered in *M. P. Special Police Establishment v. State of M. P.* : (2004) 8 SCC 788.

9. The respondents on their turn raises the preliminary objection as to

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maintainability of the petition on two counts, viz., that the petition is against a show cause notice and that the multiple relief as sought by the petitioner cannot be agitated in the writ petition. On merit, it is urged that the petitioner was appointed on compassionate ground in lieu of the death of his brother Hukum Singh, who died in harness and the willingness expressed by his widow. It is contended that subsequently the widow of Hukum Singh withdrew the concession granted by her and since only one member could be appointed on compassionate ground, the action of withdrawing the appointment of the petitioner cannot be faulted with.

10. Considered the rival submissions.

11. Objection regarding multiple relief being sought in the petition, it is observed from the relief sought that while questioning the show cause notice the petitioner also seeks direction to respondents to release the annual increments of the petitioner after 1990 and fix the pay at appropriate stage of the time scale of pay. Definitely the petitioner is aggrieved of non releasing of increment and non fixation of pay. The said grievance, as is evident from the pleading, preexisted when the petitioner was subjected to a show cause notice. The petitioner has a right to seek redressal of his grievance and unless the law prohibits, the petitioner cannot be deprived to seek remedy in a writ petition, the objection of the respondents regarding multiple relief is therefore rejected.

12. Now coming to objection that petition against show cause notice is not maintainable, in *Executive Engineer Bihar State Housing Board v. Ramesh Kumar Singh and others* : (1996) 1 SCC 327 their lordships were please to observe that :

"10. We are concerned in this case, with the entertainment of the writ petition against a show-cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a "nullity" or totally "without jurisdiction" in the traditional sense of that expression – that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a writ petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction; to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternative remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the

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even of an adverse decision, it will certainly be open to him to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India.”

13. In *Special Director and another v. Ghulam Ghouse and another* : AIR 2004 SC 1467 it was held by their lordships that :

“5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts writ petitions should not be entertained for the mere asking and as a matter of routine and the writ petitioner should invariably be directed to respond to show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petition even at the threshold by the interim protection granted.”

14. Thus when a show cause notice is ex-facie a “nullity” or totally “without jurisdiction” then it can be interfered under Article 226 of the Constitution of India.

15. In the case at hand under the Rules, viz., Madhya Pradesh Development authority Services (Officers and Servants) Recruitment Rules, 1987, “appointing authority” of member belonging to authority service is as under Rule 8 which stipulates :

“8. Appointing Authority (1) All appointments to Authority Services, Class I and Class II shall be made by the State Government.

(2) all appointments to the Authority Services, Class III and Class IV shall be made by the Chairman with prior approval of the Board.”

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16. Rules 2 (b) of the Rules defines the appointing authority:-

“(b) “Appointing authority” means :-

(i) The authority empowered to make appointments to the service of which the authority servant is for the time being a member or to the grade of the service in which the authority servant is for the time being includes; or

(ii) The authority empowered to make appointments to the post which the authority servant for the time being holds; or

(iii) The authority which appointed the authority servant to such service, grade or post, as the case may be; or

(iv) Where the authority servant having been permanent member of any other service or having subsequently held any other permanent post, has been in continuous employment of the authority, the authority which appointed him to that service to any grade in the service or to that post, whichever authority is the higher authority.”

17. Under Rule 53 of the Rules the disciplinary action can be initiated by the appointing authority. Whereas, in the instant case, the petitioner questions the authority of the Chief Executive Officer to take any disciplinary action, therefore, since jurisdiction of the Chief Executive Officer is being questioned, the petition under Article 226 of the Constitution of India is maintainable and cannot be dismissed in limine. The objection to that effect raised by respondent is overruled.

18. Regarding merit, admittedly the petitioner, a member of Development authority Service under rule 2 (f) of the Rules of 1987, and as observed hereabove under rule 8 read with rule 53 of the Rules of 1987 the Chief Executive Officer is nowhere shown to be a disciplinary authority of the class of employee as the petitioner is nor it is shown that there is delegation of power in favour of the Chief Executive Officer as would empower him to issue show cause notice and to take disciplinary action. The action initiated by the Chief Executive Officer being without authority deserves to be quashed.

19. Even otherwise it is not the case of respondent that the petitioner misrepresented or played fraud in obtaining the appointment. Though the appointment letter dated 9-11-1982 nowhere indicates that the petitioner was appointed on a compassionate ground and even if it is taken to be an appointment on compassionate ground then also the same cannot be declared a nullity at the instance of a person who changes her mind and withdraws the concession. The appointment in favour of the petitioner being not obtained by misrepresentation or fraud, creates vested right in favour of such appointee and cannot be taken away unless and otherwise in accordance with law.

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20. Having thus considered, the show cause notice dated 24-3-1999 deserves to be and is hereby quashed.

21. Regarding claim for increment and proper fixation of pay, the petitioner is at liberty to represent to respondent who shall pass reasoned order on such representation and if the petitioner is found entitled, his pay be fixed accordingly

22. The petition is allowed to the extent above. However, in the circumstances no costs.

Petition allowed.

I.L.R. [2010] M. P., 833

WRIT PETITION

Before Mr. Justice Shantanu Kemkar

14 December, 2009*

BINDAPRASAD

Vs.

NARMADA MALWA GRAMIN BANK & anr.

... Petitioner

... Respondents

A. Service Law - Service Regulations, 2001, Section 2(i) - Departmental Enquiry - Charge-sheet challenged on the ground that General Manager was not competent to issue charge-sheet - Held - On the basis of proposal made by the Chairman, Board of Directors, in their resolution in a meeting, accepted and have designated Controller/Regional Officer/General Manager not below scale IV as the competent authority within the meaning of Service Regulation - Issuance of charge-sheet by the General Manager is well within his competence and authority. (Para 4)

क. सेवा विधि - सेवा विनियम, 2001, धारा 2(i) - विभागीय जाँच - आरोप पत्र को इस आधार पर चुनौती दी गयी कि महाप्रबंधक आरोप पत्र जारी करने के लिए सक्षम नहीं था - अभिनिर्धारित - अध्यक्ष द्वारा दिये गये प्रस्ताव के आधार पर, निदेशक मण्डल ने बैठक में लिये गये संकल्प में नियंत्रक/क्षेत्रीय अधिकारी/महाप्रबंधक, जो वेतनमान चार के नीचे नहीं हैं, को सेवा विनियम के अर्थान्तर्गत सक्षम प्राधिकारी स्वीकार और नामनिर्दिष्ट किया - महाप्रबंधक द्वारा आरोप पत्र जारी करना पूरी तरह उसकी सक्षमता और अधिकारिता में है।

B. Service Law - Departmental Enquiry - Delay in initiation - Charge-sheet issued after a period of 2 years 4 months - Challenged on the ground of delay - Held - Such period in issuance of charge-sheet cannot be said to be a period which can be termed as period of inordinate delay warranting quashment of charge-sheet when no prejudice has been caused due to delay. (Para 5)

ख. सेवा विधि - विभागीय जाँच - आरम्भ करने में विलम्ब - आरोप पत्र 2 वर्ष 4 माह पश्चात् जारी किया - विलम्ब के आधार पर चुनौती - अभिनिर्धारित - जब विलम्ब के

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कारण कोई प्रतिकूल प्रभाव कारित नहीं हुआ हो तब आरोप पत्र जारी करने की ऐसी अवधि को वह अवधि नहीं कहा जा सकता जिसे आरोप पत्र अभिखंडित करने हेतु अत्यधिक विलम्ब की अवधि माना जा सके।

Cases referred :

1999 SCC (L & S) 646, (2006) 8 SCC 776, (2007) 14 SCC page 49.

Umesh Gajankush, for the petitioner.

P.B.S. Nair, for the respondents.

O R D E R

SHANTANU KEMKAR, J. :-With consent heard finally.

Petitioner is working on the post of Clerk-cum-Cashier in the respondent Narmada-Malwa Gramin Bank. He was issued a notice dated 19.07.2006 (Annexure P-1) to show cause as to why disciplinary proceedings be not initiated against him for the misconduct alleged against him in the said notice. The petitioner submitted his explanation vide reply dated 04.08.2006 (Annexure P-2). Thereafter on 02.12.2008 a charge-sheet (Annexure P-3) was issued to him levelling charges of major misconduct against him. Aggrieved by the issuance of the charge-sheet and initiation of disciplinary proceedings against him the petitioner has filed this petition.

2. The case of the petitioner is that the impugned charge-sheet has been issued by the General Manager of the respondent Bank whereas he was not an officer designated by the Chairman in terms of Section 2 (i) of Service Regulations, 2001. According to him the Competent Authority for taking disciplinary action against him is the officer designated by the Chairman as provided in Section 2 (i) of Service Regulations 2001. He submits that the General Manager who has issued the impugned charge-sheet has not been authorized or designated by the Chairman for the same. He has also challenged the issuance of the charge-sheet on the ground of delay. According to him after 2½ years of the date of issuance of the show cause notice (Annexure P-1) the charge-sheet (Annexure P-3) has been issued, in the circumstances the charge-sheet is liable to be quashed on the ground of delay of 2½ years.

3. The respondents have filed reply and have stated that in view of the Resolution dated 19.09.2006 (Annexure R-1) passed by the Board of Directors of the respondent Bank the Controller/Regional Officer/General Manager not below Scale-4 have been empowered to initiate disciplinary proceedings against the employees. In the circumstances issuance of the impugned charge-sheet by the General Manager on the basis of resolution dated 19.09.2006 (Annexure R-1) cannot be said to be by incompetent Authority. As regards delay it has been stated that there is no inordinate delay in issuance of the impugned charge-sheet. According to the respondents in the absence of any substantial delay and prejudice to the petitioner, he cannot be allowed to say that the delay in issuance of the charge-sheet vitiates the same.

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4. Having heard learned counsel for the parties and on close scrutiny of Resolution dated 19.09.2006 (Annexure R-1) it is revealed that the said Resolution was passed on the basis of proposal initiated by the Chairman of the respondent Bank. The proposal of the Chairman of the respondent proposing for nomination of the Officers to be designated as Competent Authority for the purposes of Section 2 (i) of the Service Regulations, 2001 has been accepted by the Board of Directors in their meeting vide Resolution (Annexure R-1) and designated the Controller/Regional Officer/General Manager not below Scale-4 as Competent Authority within the meaning of Section 2 (i) of the Service Regulations, 2001. In the circumstances when the proposal was moved by the Chairman himself the petitioner's contention that the General Manager who has issued the charge-sheet to him was not competent for the same as no order to that effect has been issued by the Chairman cannot be accepted. The Resolution (Annexure R-1) was passed on the basis of the proposal made by the Chairman himself and therefore there was no necessity for issuance of a separate order by the Chairman. In the circumstances the issuance of the charge-sheet by the General Manager was well within his competence and authority and as such it cannot be said that the charge-sheet has been issued by incompetent authority.

5. The next contention of the petitioner about delay in issuance of the charge-sheet is also having no merit. The alleged misconduct was of the period between April, 2005 to May, 2006. A show cause notice was issued to the petitioner on 19.07.2006. The petitioner submitted his reply on 05.08.2006. After examining the same the impugned charge-sheet has been issued on 02.12.2008. Thus, the period of two years and four months which has been taken by the respondents for issuance of the charge-sheet cannot be said to be a period which can be termed to be of inordinate delay warranting quashment of charge-sheet more particularly considering the nature of the charges levelled against the petitioner. Moreover the petitioner has not been able to point out as to how this delay will cause prejudice to him. In the absence of any prejudice mere delay does not vitiate enquiry. See *Additional Superintendent of Police Vs. T. Natarajan*, 1999 Supreme Court Cases (L & S) 646, *P.D. Agrawal Vs. State Bank of India & others* (2006) 8 SCC 776 & *Government of Andhra Pradesh & others Vs. V. Appalla Swamy* (2007) 14 SCC 49.

6. In view of the aforesaid I am of the view that both the grounds raised by the petitioner are having no merit. Accordingly the petition deserves to be and is hereby dismissed. The interim order dated 12.11.2009 is vacated. No orders as to costs.

Petition dismissed.

N.K. DUBEY Vs. STATE OF M.P.

I.L.R. [2010] M. P., 836

WRIT PETITION

Before Mr. Justice Arun Mishra & Mr. Justice S.C. Sinho

7 January, 2010*

N.K. DUBEY

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

A. Service Law - Class III (Non-Ministerial) Forest Service Recruitment Rules, M.P. 1967, Rule 15, Class III (Non-Ministerial) Forest Services Recruitment Rules, M.P. 1999, Rule 16 - Seniority of Forester is maintained circle wise under Rules of 1967 and also under Rules 1999 - Held - Rules not in violation of Article 14 & 16 of Constitution - Rules cannot be said to be arbitrary or ultra vires in any manner. (Para 7)

क. सेवा विधि - तृतीय वर्ग (अलिपिकवर्गीय) वन सेवा भर्ती नियम, म.प्र. 1967, नियम 15, तृतीय वर्ग (अलिपिकवर्गीय) वन सेवा भर्ती नियम, म.प्र. 1999, नियम 16 - नियम 1967 के अन्तर्गत तथा नियम 1999 के भी अंतर्गत वनपाल की ज्येष्ठता वृत्त अनुसार रखी जाती है - अभिनिर्धारित - नियम संविधान के अनुच्छेद 14 और 16 के उल्लंघन में नहीं हैं - नियम किसी भी प्रकार से मनमाने या अधिकारातीत नहीं कहे जा सकते हैं।

B. Service Law - Class III (Non-ministerial) Forest Service Recruitment Rules, M.P. 1967, Rule 15, Class III (Non-ministerial) Forest Service Recruitment Rules, M.P. 1999, Rule 16 - Petitioner selected as Forester by State level examination and posted in forest circle - His seniority is maintained at forest circle level - His other batch mates or some other juniors have been allotted to some other circles and obtained promotions earlier by virtue of availability of earlier vacancies - Held - It could not be said to be a case of discrimination. (Para 7)

ख. सेवा विधि - तृतीय वर्ग (अलिपिकवर्गीय) वन सेवा भर्ती नियम, म.प्र. 1967, नियम 15, तृतीय वर्ग (अलिपिकवर्गीय) वन सेवा भर्ती नियम, म.प्र. 1999, नियम 16 - राज्य स्तरीय परीक्षा द्वारा याची का वनपाल के रूप में चयन हुआ और वन वृत्त में नियुक्ति की गयी - उसकी ज्येष्ठता वन वृत्त स्तर पर रखी गई - उसके अन्य सहकर्मी या कुछ अन्य कनिष्ठों को कुछ अन्य वृत्त आवंटित किये गए और पूर्वतर रिक्रियों की उपलब्धता के आधार पर उन्होंने पहले पदोन्नति प्राप्त कर ली - अभिनिर्धारित - यह विभेद का मामला नहीं कहा जा सकता।

Cases referred :

2002(2) MPLJ 22.

D.K. Dixit with Anshul Dixit, for the petitioner.

Deepak Awasthi, G.A., for the respondent/State.

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O R D E R

The Order of the Court was delivered by ARUN MISHRA, J. :-The writ petition has been filed assailing the vires of the recruitment rules called M.P. Class III (Non Ministerial) Forest Service Recruitment Rules, 1967 (hereinafter referred to as the Rules of 1967) and M.P. Class III (Non Ministerial) Forest Service Recruitment Rules, 1999 (hereinafter referred to as the Rules of 1999) inasmuch the seniority of the Forester is being maintained at the forest circle level.

2. It is averred in the petition that petitioner was directly appointed on the post of Forester vide order dated 31.10.1975. He was later on confirmed on 1.3.1977. At the relevant time the rules of 1967 were applicable. As per these rules the Divisional Forest Officer was the appointing authority of the Forester and the appointments used to be made directly and by promotion as per schedule II of the Rules of 1967 (P-2). Later on rules of 1999 were framed, which provides that appointing authority of the Forester is Conservator of Forest and 100% posts are filled by promotion. Seniority of the Forester is maintained circle wise; under rules of 1967 and also under rules of 1999. Next promotion of the Forester is on the post of Deputy Ranger and from Deputy Ranger to the post of Ranger. According to Rules of 1967, the appointing authority of Dy. Ranger was Conservator and as per rules of 1999 the appointing authority is the same. The seniority of the Dy. Ranger is being maintained at the State level. Petitioner was also promoted on the post of Dy. Ranger vide order (P-6) dated 17.6.2005, pursuant thereto posting order (P-7) dated 8.7.2005 was issued. Petitioner had received training at Forest School, Betul from 1.11.1974 to 30.10.1975 and 50 candidates were admitted in the said batch along with the petitioner. After receiving the training, these candidates were posted as Foresters in different circles of the State. Petitioner was placed at serial No. 6 in the said batch. Candidates of this batch have been promoted on the post of Dy. Ranger much earlier than the petitioner and they have also been promoted to the higher posts by virtue of their being posted in different circles. In some circles the promotions are being granted quite earlier and in some circles the candidates have to wait for 25-30 years, which has resulted into promotions of several juniors to the petitioner by virtue of their being posted in different circles. There is also improper distribution of the posts of Dy. Ranger in the circles, which was causing hardship to the Foresters in the matter of promotion. Prayer has been made to quash the provisions of the Rules of 1967 and 1999 so far as it regards to maintaining the seniority of Foresters at the forest circle level. It is prayed that seniority of the Foresters be directed to be maintained at the State level so that there is no discrimination in the matter of promotion. When the selection of Foresters is made on State level, there is no rhyme or reason to accord the seniority at the forest circle level.

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3. In the return filed by the respondents, it is contended that in the year 1987 allocation of 1769 posts of Dy. Rangers was made to the Forest Conservators by the Director General of Forests, Bhopal vide his letter (R-1) dated 21.5.1987. As per the aforesaid communication, 1043 posts of Foresters have been abolished and instead of that, an equal number of posts of Dy. Ranger were created. It is on account of this change in the strength of the cadre of the Dy. Ranger that the aforesaid allocation of posts was made to the different forest circles. It is further contended that in accordance with the aforesaid allotment of posts, Conservator of Forests, Seoni Circle, Seoni was allocated 44 posts of Dy. Rangers and 7 posts were lying vacant totaling 51 posts of Dy. Rangers available to be filled in the year 1987. In order to fill the aforesaid posts, DPC was held on 24.11.1987 and the petitioner along with others, who were within the zone of consideration, were considered for promotion and as per the recommendations of the committee, promotions were made to 44 posts. Order (R-3) was issued on 24.11.1987. Case of the petitioner was never recommended by the DPC, there were no posts left, thus for want of vacancy the petitioner was not recommended for promotion to the post of Dy. Rangers. Petitioner's case was further considered for promotion to the post of Dy. Ranger by the subsequent DPC but because Senior Foresters were available in the Seoni Forest Circle, the name of the petitioner was not considered. However, petitioner was promoted as Dy. Ranger vide order dated 21.7.2005. Petitioner cannot claim such relief for which he is not directly entitled. Direction passed by the Tribunal in O.A. No. 3551/96 has been stayed by this Court in Writ Petition, later on the order has been set aside. Petitioner has been promoted on the post of Dy. Ranger in seniority list of Seoni Circle Foresters and there was no junior Forester promoted, thus petitioner was not superseded in the Seoni Circle.

4. Shri D.K. Dixit, learned counsel appearing with Shri Anshul Dixit for petitioner has submitted that when examination for selection was held at the State level, there was no reason to maintain the seniority at the forest circle level. List was also prepared of the Foresters at the State level. Seniority of Dy. Ranger is maintained at State level though promotion to the post of Dy. Rangers is ordered out of Foresters working in the forest circle concerned. By virtue of being posted in the different circle, other batch mates of the petitioner had obtained the promotion much earlier than the petitioner and they have been promoted on the higher posts also. Even several juniors to the petitioner were also promoted much earlier than the petitioner in other circles, which has resulted into discrimination. Thus the rules providing for maintaining the seniority at the forest circle level be quashed.

5. Shri Deepak Awasthi, learned Government Advocate appearing for the State has supported the rules. He has submitted that seniority of the Foresters is rightly maintained at forest circle level. Promotion of the Dy. Ranger is made from the Foresters working in the forest circle. Petitioner cannot compare his case with

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the Foresters working in different divisions and allotted to different circles. Seniority can be maintained at a particular level. There is no arbitrariness in the rules, they cannot be said to be discriminatory.

6. Rule 16 of the Rules of 1999 provides for condition for eligibility for promotion/transfer. Schedule IV has the reference to Rule 16. Schedule IV provides that Forest Guard has to be promoted as Forester on completion of 12 years of service and Forester can be promoted as Dy. Ranger on completion of 5 years' service on due consideration of seniority subject to fitness by DPC to be constituted by Chief Conservator of Forest. Promotion to the post of Dy. Ranger is out of Foresters at circle level as apparent from Note 1 of Schedule 4. Similar was the position in Rules of 1967.

7. Question is by holding the examination for selection of Foresters at the State level and thereafter various Foresters as per their merits are allotted to the different forest circles in the State, whether their seniority has to be maintained at the State level or at the forest circle level. In other words whether provision of maintaining the seniority of the Foresters at the forest circle level, can be said to be arbitrary. In our considered opinion merely by holding the examination at the State level would not come in the way of the State in maintaining the seniority of Foresters at the forest circle level. Merely by the fact that petitioner's other batch mates or some other juniors have been allotted to some other circles and obtained promotions earlier by virtue of availability of early vacancy, it could not be said to be a case of discrimination vis-a-vis to the petitioner. He has been put to a different circle altogether which is zone for consideration for promotion to next higher post. When large number of posts of Foresters were abolished, case of the petitioner was considered but he could not be selected as apparent from the return. When he was found fit he has been promoted in his own forest circle to the post of Dy. Ranger. The submission raised by Shri D.K. Dixit that there is discrimination in the matter of promotion in different circles, cannot be accepted as each circle forms a class. Petitioner cannot complain of violation of Article 14 and 16 by comparing his case with a person of different class i.e. circle. Petitioner cannot claim the right to be treated at par with the employees of the other forest circle, rules cannot be said to be arbitrary or ultra vires in any manner. The feeder cadre for Dy. Ranger post is out of Foresters working in forest circle. Thus, maintaining seniority w.e.f. 1967 at forest circle level is appropriate. Petitioner has been allocated to Seoni circle as per his merit in relation of Foresters. The position prevailing for 42 years cannot be upset nor it can be said to be illegal or arbitrary.

8. Counsel has relied upon the decision of *Y.D. Shukla and others Vs. High Court of Judicature of M.P. At Jabalpur and another* - 2009 (2) M.P. L.J. 22 in which question came up for consideration was with respect to grant of promotion to the Civil Judges (Senior Division) on the basis of merit cum seniority on the

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post of District Judges (Entry Level) till the attainment of the required percentage in Rule 5(1) of M.P. Uchchatar Nyayik Sewa (Bharti Tatha Sewa Shartein) Niyam, 1994. The question involved in the instant case is entirely different. Thus, the said decision is of no help to the petitioner.

9. The decision of Tribunal which has been referred to, has been set aside by this Court in W.P. No. 4717/2001 vide order dated 7.11.2003. This Court did not delve upon the merit of the submission with respect to vires in aforesaid order, which we have examined in the instant petition.

10. Resultantly, we find no merit in the petition, same is dismissed.

Petition dismissed.

I.L.R. [2010] M. P., 840

WRIT PETITION

Before Mr. Justice K.K. Lahoti & Mr. Justice Alok Aradhe

7 January, 2010*

RACHNA KHARE (KU.)

... Petitioner

Vs.

BACHCHOO RAM & anr.

... Respondents

A. Stamp Act (2 of 1899), Schedule 1-A, Article 5(e)(ii) - Stamp duty payable - Agreement or Memorandum of agreement - Trial Court directed payment of deficit stamp duty on the basis of earnest money paid in the agreement - Held - When possession of property is not given stamp duty shall be @ 1% of total consideration of the property set forth in the agreement - Order not sustainable under law - Order set-aside - Petition allowed. (Paras 6 & 7)

क. स्टाम्प अधिनियम (1899 का 2), अनुसूची 1-ए, अनुच्छेद 5(ई)(ii) - देय स्टाम्प शुल्क - करार या करार का ज्ञापन - विचारण न्यायालय ने करार में अदा किये गये अग्रिम धन के आधार पर स्टाम्प शुल्क में कमी के भुगतान का निदेश दिया - अभिनिर्धारित - जब सम्पत्ति का कब्जा नहीं दिया जाता तब स्टाम्प शुल्क करार में उपवर्णित सम्पत्ति के कुल प्रतिफल का 1 प्रतिशत होगा - आदेश विधि के अन्तर्गत कायम रखे जाने योग्य नहीं - आदेश अपास्त - याचिका मंजूर।

B. Stamp Act (2 of 1899), Sections 33(1) & 38(2) - Impounding a document - Payment of deficit stamp duty and penalty - Procedure laid down by the Apex Court in Peteti Subba Rao's case [(2002) 10 SCC 427]. (Para 8)

ख. स्टाम्प अधिनियम (1899 का 2), धाराएँ 33(1) व 38(2) - दस्तावेज परिबद्ध करना - स्टाम्प शुल्क की कमी का भुगतान और शास्ति - उच्चतम न्यायालय द्वारा पतेती सुब्बा राव के मामले [(2002) 10 SCC 427] में प्रक्रिया अधिकथित की गयी।

Cases referred :

(2002) 10 SCC 427.

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V.K. Shrivastava, for the petitioner.

Sunil Mishra, for the respondents.

O R D E R

This petition is directed against an order dated 7.5.2008 by 1st Additional District Judge, Balaghat in civil suit no.7-A/2007 by which the trial Court decided the objection of petitioner/defendant in respect of insufficiency of stamp duty on agreement dated 22.11.2005.

2. Learned counsel for petitioner submitted that the order of trial Court is not correct, as it has been passed ignoring the provisions as contained in Article 5 of Schedule 1-A of the Indian Stamp Act, 1899 (hereinafter referred to as 'Act' for short). It is submitted that as per Article 5(2)(e) of the Act the stamp duty was payable @ 1% of the total consideration of the property set forth in the agreement or memorandum of agreement, but the Court below erred in directing recovery of deficit stamp duty on the basis of earnest money paid at the time of agreement and not on the basis of total consideration of the property set forth in the agreement.

3. Learned counsel for respondents opposed the aforesaid contention and submitted that the order passed by the trial Court is just and proper.

4. To appreciate the rival contentions of the parties it would be appropriate if the factual position in the case is stated: The petitioner herein is defendant in civil suit no.7-A/2007 pending before the 1st Additional Judge to the Court of Additional District Judge, Balaghat, between the parties. The respondents filed a suit for specific performance against the petitioner herein on the basis of an agreement dated 22.11.2005, by which a house property situated on Nazul Sheet No.16-D, plot no.57 area 268 sq. meter was agreed to be sold, the sale consideration was fixed @ Rs.225/- per sq. ft., earnest money of Rs.2,00,000/- was paid at the time of execution of agreement and remaining consideration was to be paid at the time of sale deed after ascertaining the total consideration on measurement of the house.

5. Before the trial court petitioner herein raised an objection that the document agreement, Annexure P-1 of this petition, is on insufficient stamp duty. The trial Court after hearing both the parties found substance in the contention of the petitioner herein and directed the plaintiff to make payment of stamp duty on the amount of earnest money Rs.2,00,000/- @ 1% and after deduction the amount of stamp duty already paid Rs.100/-, the trial Court directed that Rs.1,900/- is the deficit stamp duty and by imposing penalty 10 times to the duty Rs.19,000/-, total amount was directed to be paid by the respondents. This order is under challenge in this petition.

6. To appreciate the contention of petitioner, relevant provision as contained in Article 5(e) of Schedule 1-A of the Act may be looked into, which reads as under :-

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(e) If relating to sale of immovable property :-	
(i) When possession of the property is delivered or is agreed to be delivered without executing the conveyance	The same duty as a conveyance (No.20) on the market value of the property.
(ii) When possession of the property is not given.	One percent of the total consideration of the property set forth in the agreement or memorandum of agreement.

The aforesaid provision specifically provides that the stamp duty of agreement or memorandum of an agreement when possession of the property is not given shall be @ 1% of the total consideration of the property set forth in the agreement. The aforesaid provision is very clear and provides payment of stamp duty of 1% of the total consideration of the property set forth in the agreement. The trial Court ignoring the aforesaid provision directed payment of deficit stamp duty on the basis of earnest money paid in the agreement.

7. The aforesaid order is apparently contrary to the statutory provision as contained in Article 5 (e) of Schedule 1-A of the Act and is not sustainable under the law. As the stamp duty is to be calculated, after calculating the total consideration as set forth in the agreement, we find it proper to remit the matter to the trial Court to pass a fresh order.

8. While considering the question of impounding a document, payment of deficit stamp duty and penalty the trial Court shall look into the legal position as settled by the Apex Court in *Peteti Subba Rao Vs. Anumala S.Narendra* [(2002) 10 SCC 427], in which the Apex Court held thus :-

6. Mr.M.N.Rao, learned Senior Counsel submitted that the appellant cannot afford to pay the penalty now suggested as the amount is far beyond his capacity. But at the same time, he made a fervent plea that his suit cannot be allowed to be dismissed on the ground of inability to pay the huge penalty amount alone. We find some force in the said plea. In a case where the party fails to pay the penalty suggested by the court the document impounded has to be sent to the Collector for the purpose of taking further steps in respect of that document as provided in Section 40 of the Act. The Collector has the power to require the person concerned to pay the proper duty together with a penalty amount which the Collector has to fix in consideration of all aspects involved. The

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restriction imposed on the Collector in imposing the penalty amount is that under no circumstances the penalty amount shall go beyond ten times the duty or the deficient portion thereof. That is the farthest limit which means that only in very extreme situations the penalty need be imposed up to that limit. It is unnecessary for us to say that the Collector is not required by law to impose the maximum rate of penalty as a matter of course whenever an impounded document is sent to him. He has to take into account various aspects including the financial position of the person concerned.

7. In the aforesaid situation we set aside the impugned judgment passed by the trial court as well as the High Court. We direct the trial court to impound the document as indicated in Section 33(1) and forward the same to the Collector concerned as envisaged in Section 38(2) of the Act.

8. We also direct the Collector concerned to complete the proceedings envisaged in Section 40(1) of the Act within a period of one month from the date of receipt of the document. The trial Court shall await the receipt of the certificate of the order passed by the Collector for proceeding further in the suit. In other words the suit will be revived only on receipt of such certificate and the copy of the order of the Collector so passed."

9. The trial court after passing a fresh order shall follow the law laid down by the Apex Court in *Peteti Subba Rao* (supra) and shall sent the documents after impounding under section 33(1) to the Collector, as envisaged in section 38(2) of the Act.

With the aforesaid direction this petition is allowed, with no order as to costs.

C.C., as per rules.

Petition allowed.

April-10 (Final)

RAJESH UPADHYAY Vs. STATE OF M.P.

I.L.R. [2010] M. P., 844

WRIT PETITION*Before Mr. Justice S.C. Sharma*

7 January, 2010*

RAJESH UPADHYAY

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

A. Service Law - Departmental Enquiry - Charge of demand of illegal gratification and misbehave with complainant - During the enquiry proceedings, complainant himself has categorically denied the involvement of the employee in the incident - Even though enquiry officer has recorded findings against employee - The findings are perverse in nature. (Para 8)

क. सेवा विधि - विभागीय जाँच - अवैध परितोषण की माँग और परिवादी के साथ अभद्र व्यवहार करने का आरोप - जाँच कार्यवाहियों के दौरान, स्वयं परिवादी ने घटना में कर्मचारी के अंतर्ग्रस्त होने से स्पष्ट रूप से इनकार किया - फिर भी जाँच अधिकारी ने कर्मचारी के विरुद्ध निष्कर्ष अभिलिखित किये - निष्कर्ष विपर्यस्त प्रकृति के हैं।

B. Service Law - Value of statement recorded during preliminary enquiry - The conclusion of the enquiry officer based upon the statements of the witnesses recorded during the course of preliminary enquiry - Such statements were recorded behind the back of the employee - Therefore, the conclusion stands vitiated. (Para 13)

ख. सेवा विधि - प्रारम्भिक जाँच के दौरान अभिलिखित कथन का मूल्य - जाँच अधिकारी का निष्कर्ष प्रारम्भिक जाँच के दौरान अभिलिखित साक्षियों के कथनों पर आधारित - ऐसे कथन कर्मचारी की पीठ पीछे अभिलिखित किये गये थे - इसलिए निष्कर्ष दूषित हो जाता है।

C. Service Law - Enquiry officer - Judge/Prosecutor - Enquiry officer has conducted a regular cross-examination of witnesses - He has also conducted the cross-examination of delinquent - Meaning thereby, the enquiry officer, has assumed the role of the prosecutor while acting as a Judge in the departmental proceedings - Not permissible. (Para 12)

ग. सेवा विधि - जाँच अधिकारी - न्यायाधीश/अभियोजक - जाँच अधिकारी ने साक्षियों की नियमित प्रतिपरीक्षा की - उन्होंने अपचारी की प्रतिपरीक्षा भी की - जिसका अर्थ है, जाँच अधिकारी ने विभागीय कार्यवाहियों में न्यायाधीश के रूप में कार्य करते समय अभियोजक की भूमिका ग्रहण कर ली - अनुज्ञेय नहीं।

D. Service Law - Double jeopardy - Once the punishment of censure was inflicted by the disciplinary authority in respect of absence from the duty without prior sanction of the leave - The question of punishing the employee on the basis of charge of misconduct amounts to double jeopardy

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- Even though disciplinary authority has subsequently cancelled the order of censure and order of dismissal has been passed. (Para 9)

घ. सेवा विधि - दोहरा संकट - जब एक बार अवकाश की पूर्वमंजूरी के बिना कर्तव्य से अनुपस्थिति के सम्बन्ध में अनुशासनिक प्राधिकारी द्वारा परिनिदा का दण्ड दे दिया गया - कदाचार के आरोप के आधार पर कर्मचारी को दण्डित करने का प्रश्न दोहरे संकट की कोटि में आता है - यद्यपि अनुशासनिक प्राधिकारी ने तत्पश्चात् परिनिदा का आदेश रद्द कर दिया हो और पदच्युति का आदेश पारित किया हो।

Cases referred :

2008(4) MPLJ 35, (2004) 10 SCC 87.

Gaurav Samadhiya, for the petitioner.

Ami Prabal, Dy.A.G., for the respondents.

ORDER

S.C. SHARMA, J. :-The petitioner, a dismissed Constable, has filed this present petition being aggrieved by the order dated 31.1.2006, by which a punishment of dismissal from service has been inflicted upon him. The petitioner is also aggrieved by the order dated 21.6.2006 passed by the Dy. Inspector General of Police Range Gwalior, Gwalior (Appellate Authority), rejecting the appeal of the petitioner. The petitioner is also aggrieved by the order dated 4.12.2006 passed by the Inspector General of Police, by which a Mercy Petition preferred by the petitioner against the dismissal has also been turned down.

2. The contention of the learned counsel for the petitioner is that the petitioner was appointed as Constable with effect from 22.7.1997 and was posted at Police Station Billawa, District Gwalior in the year 2005, i.e., at the time the alleged incident took place, on the basis of which he has been dismissed from service. The petitioner has further stated that a chargesheet was issued on 27.6.2005 on account of the alleged misconduct and the petitioner was directed to file reply to the charges levelled against him. The petitioner submitted a reply to the charges levelled against him and denied the charges by submitting a reply on 28.7.2005. The petitioner has further stated the appointing authority being not satisfied with the reply submitted by the petitioner appointed an Inquiry Officer and Inquiry Officer conducted an inquiry into the matter. The petitioner has further stated that the Inquiry Officer has held the charges established against him and on the basis of the report submitted by the Inquiry Officer, the petitioner has been dismissed from service vide order dated 31.1.2006 and the same has been affirmed by the Appellate Authority as well as by the Inspector General of Police while dismissing the Mercy petition of the petitioner. The petitioner's further contention is that as per the chargesheet dated 27.6.2005, three charges were levelled against him, which are as under :-

(A) He has demanded illegal gratification as entry fee from

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Complainant Pooran Singh Yadav on 8.2.2005 and on refusal on the part of Pooran Singh Yadav, he has misbehaved with Shri Pooran Singh Yadav and he was also under the influence of liquor;

(B) He was absent from duties from 10.9.2004 to 3.10.2004 unauthorizedly without there being any sanction-leave application;

(C) He has unauthorizedly used the Police Vehicle and the same has also met with an accident resulting in damage to the vehicle as well as to the Gate of the Police Station.

3. The petitioner's contention is that Complainant Pooran Singh Yadav in his statement recorded during the Departmental Enquiry has categorically stated before the Inquiry Officer that the petitioner was not present and has not demanded any money from him on 8.2.2005. The petitioner's contention is that once the complainant has categorically stated before the Inquiry Officer that he is not the person who has misbehaved with the complainant on 8.2.2005, the Inquiry Officer could have not established the Charge No.1. In respect of Charge No.2, i.e. unauthorized absence from 10.9.2004 to 3.10.2004, the petitioner has stated that the aforesaid period was regularized by passing an order dated 2.8.2005 and the petitioner was punished with a punishment of censure by the Superintendent of Police and, therefore, once he was punished in respect of the same period by the Superintendent of Police, he could have been punished for the same again. In respect of Charge No.3, the petitioner has stated that the Station House Officer had permitted him orally to use the vehicle and in support of the same, a document was produced before the Inquiry Officer and inspite of that the Inquiry Officer has held the petitioner guilty of the Charge No.3 also. The petitioner has prayed for quashing of the punishment order passed by the Superintendent of Police as well as the order passed by the Appellate Authority and also the order passed by the Inspector General of Police dismissing the Mercy Petition of the petitioner. The petitioner has also argued before this Court that the Inquiry Officer has also acted as a Presenting Officer and has cross-examined the witnesses during the course of the inquiry and, therefore, the inquiry also stands vitiated. However, the petitioner before this Court has categorically stated that he is not claiming any back wages in the matter.

4. A detailed and exhaustive reply has been filed in the matter and the contention of the respondents/State is that the chargesheet was issued to the petitioner on account of the alleged misconduct and the chargesheet was based upon the preliminary inquiry. The respondents-State has produced the entire record relating to the departmental inquiry and the contention of the respondents is that during the preliminary inquiry all the witnesses have stated categorically that it was the petitioner who had demanded illegal gratification by way of entry fee from Shri Pooran Singh Yadav. The respondents have stated that after holding the preliminary

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inquiry as prima-facie charges were established against the petitioner, the respondents decided to hold a regular inquiry in order to grant an opportunity of hearing to the petitioner and a chargesheet was issued on 26.7.2005. The respondents have further stated that in the departmental inquiry, the petitioner was granted an opportunity of hearing. He was granted an opportunity to cross-examine all the witnesses produced during the course of the inquiry and the Inquiry Officer has not acted as a Presenting Officer and only clarificatory questions were asked. The respondents have stated that the evidence on record establishes the guilt of the petitioner and, therefore, as it is not a case of no evidence, the order of punishment, the order passed by the Appellate Authority and the order passed in the Mercy Petition do not warrant any interference and the petitioner being a member of the Disciplined Force has rightly been dealt with in the matter.

5. Learned Dy. Advocate General has also argued before this Court that the order of punishment in respect of unauthorized absence for a period with effect from 10.9.2004 to 3.10.2004 has been cancelled subsequently on 31.1.2006, therefore, it is not a case of double jeopardy. Learned Dy. Advocate General has also argued before this Court that the petitioner has admitted the Charge No.3 and has also gone to the extent in getting the Gate repaired of the Police Station at his own expenses and, therefore, the petitioner being the member of the Force has rightly been punished by the authorities.

6. Heard the learned counsel for the parties and perused the record.

7. In the present case, the petitioner, who is an employee of the Police Department, was appointed on 22.7.1997 and at the time of the incident, i.e., on 8.2.2005, he was posted at Police Station Billaui, District Gwalior. A preliminary inquiry in respect of the alleged misconduct was held in the matter and the statements of the witnesses were recorded in the preliminary inquiry. One Shri Pooran Singh Yadav, who filed a complaint to the Authorities in respect of demand of illegal gratification, was examined during the preliminary inquiry and the complaint of Shri Pooran Singh Yadav is also on record, which has been produced before this Court by the respondents. The complaint of Shri Pooran Singh Yadav, which is dated 8.2.2005, refers to Arakshak Upadhyaya. From the complaint, it is established that the word "Rajesh" has been written with Pen between the words "Arakshak and Upadhyaya", though the entire complaint is a typed complaint. During the course of the departmental inquiry, the complainant Shri Pooran Singh Yadav has categorically stated before the Inquiry Officer that the petitioner is not the same person who has asked for illegal gratification or who has misbehaved with him. Thus, the complainant himself has stated before the Inquiry Officer that the petitioner has not committed any misconduct and he has never seen the petitioner earlier.

8. Keeping in view the statement of the complainant who himself has

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categorically stated that the petitioner was not the person who has misbehaved with him or has demanded illegal gratification, the findings recorded by the Inquiry Officer in respect of the Charge No.1 are perverse in nature.

9. In respect of Charge No.2, the competent disciplinary authority in its own wisdom has earlier punished the petitioner by passing the order dated 2.8.2005 and a punishment of censure was inflicted upon him. Once the punishment of censure was inflicted by the Disciplinary Authority in respect of the absence from the duty without prior sanction of the leave, by Order dated 2.8.2005, the question of punishing to the petitioner on the basis of the charge of misconduct amounts to double jeopardy even though the respondents have subsequently cancelled the order dated 2.8.2005 on the same day and the order of dismissal has been passed in the matter, i.e., on 31.1.2006.

10. In respect of Charge No.3, the inquiry report of the Inquiry Officer reveals that the petitioner has brought to the notice of the Inquiry Officer a receipt issued by M/s. Private Sales, Dabra, duly signed by the Station House Officer as he has purchased the diesel for the same vehicle under authorization of the Station House Officer. The petitioner has categorically stated that he was permitted orally by the Station House Officer from time to time in case of emergency to use the Vehicle. Though the petitioner has not produced any evidence on record, by which it can be safely gathered that the petitioner was permitted by the Station House Officer to use the Government vehicle as stated by the petitioner, however, in the present case, the entire record of the departmental inquiry reveals that no Presenting Officer was appointed by the Disciplinary Authority at any point of time. The Inquiry Officer himself has acted as a Presenting Officer and he has cross-examined all the witnesses in detail produced during the course of the departmental inquiry. As many as 9 witnesses were produced during the course of the departmental inquiry and it was the Inquiry Officer who has cross-examined all the 9 witnesses in detail during the course of the inquiry. Not only this, he has cross-examined the complainant also, namely, Shri Pooran Singh Yadav S/o Deviram and during his cross-examination by the Inquiry Officer, a question was asked to Shri Pooran Singh Yadav as to whether Rajesh Upadyaya has misbehaved with him or not. In his cross-examination, he has categorically stated that he has not named Rajesh Upadyaya. He has further stated in his cross-examination that later on some interpolation has been done by inserting the name "Rajesh" in his complaint. Thus, the record establishes that the Inquiry Officer has acted as Prosecutor in the present case.

11. This Court in the case of *Ram Prakash Gaya Prashad Vs. State of M.P. and others* 2008(4) M.P.L.J. 35 in paragraphs 8, 9, 10 & 11 has held as under:-

"8. Rule 14 of the CCA Rules of 1966 provides procedure for imposing penalties. Relevant Rule 14 (5) (c) reads as under:

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"Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge."

9. The Presenting Officer appointed under rule 14 (5) (c) of the CCA Rules of 1966 is in fact is a person appointed like a prosecutor and the person has to prove the misconduct before the Enquiry Officer. It is the Presenting Officer who conducts the chief examination of the prosecution witnesses as well as cross-examination of the defence witnesses. It is again the Presenting Officer who conducts the cross-examination of the delinquent government servant in order to arrive at a finding of guilt. In the present case after going through the record minutely, it is evident that the Enquiry Officer has conducted the chief examination and he has conducted the cross-examination of the defence witnesses as well as cross-examined the delinquent government servant. Thus, the Enquiry Officer himself has played the role of the prosecutor.

10. A Division Bench of this Court in the case of Union of India through its Secretary, Ministry of Railway, New Delhi and others vs. Mohd. Naseem Siddiqui 2005 (1) LLJ 931 in paragraph 16 has held as under:

We may summarise the principles thus:

- (i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor,
- (ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.
- (iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

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(iv) *If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.*

(v) *As absence of a presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in any recorded in the inquiry.*

Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.

11. *In the present case, it is evident from a perusal of the enquiry proceedings that no Presenting Officer was appointed by the disciplinary authority. The evidence on behalf of the disciplinary authority has been presented by the Enquiry Officer, by conducting a regular examination- in-chief of prosecution witnesses by taking them through the prosecution case. The Enquiry Officer has also conducted in the present case regular cross-examination of the defence witnesses. The Enquiry Officer has also conducted the cross-examination of the delinquent government-servant. It is not a case where the Enquiry Officer in the absence of the Presenting Officer has simply put clarificatory questions to the delinquent government servant.*

12. *Keeping in view the judgment delivered by this Court and also keeping in view the record relating to Departmental Enquiry Proceedings, it is evident that the Inquiry Officer has in the present case conducted regular cross examination of witnesses and he has also conducted the cross-examination of the delinquent government servant. It is not a case where the Inquiry Officer has simply asked clarificatory questions to the delinquent government servant. Meaning thereby, the Inquiry Officer, has assumed the role of the prosecutor while acting as a judge in the departmental enquiry proceedings.*

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13. Learned Counsel for the petitioner has stated that the Inquiry Officer heavily relied upon the statement recorded during the preliminary inquiry and it is an admitted fact that the petitioner has not participated in the preliminary inquiry at any point of time. The statements of the witnesses were recorded during the preliminary inquiry behind the back of the petitioner and, therefore, the conclusion of the Inquiring Officer based upon the statement of the persons recorded during the course of the preliminary inquiry, stands vitiated. The Apex Court in the case of *Union of India & Others v. Mohd. Ibrahim* reported in (2004) 10 SCC 87 has held as under :-

"1. Leave granted.

2. The Union of India is in appeal against the order of the Tribunal setting aside an order of dismissal of the respondent as well as the order of the High Court refusing to interfere in its jurisdiction under Article 226 of the Constitution. In a disciplinary proceeding against the respondent, a set of charges levelled against whom appear to be grave and serious, the ultimate conclusion of the enquiring officer having been based upon statement of persons made in the course of preliminary enquiry, the Tribunal came to hold that the conclusion is vitiated since the same was based upon the statement of persons examined in the preliminary enquiry and accordingly the Tribunal set aside the order of dismissal. The High Court on being approached has refused to interfere with the order in an application under Article 226 of the Constitution. When the matter was listed for admission, the learned ASG requested that the power of the employer to start a fresh proceeding should not be whittled down in any manner, particularly in view of the nature of charges against the delinquent. He, however, fairly stated that in the procedure adopted in the case in hand, the order cannot be found fault with. Pursuant to the notice, the respondent has entered appearance and the learned counsel for the respondent vehemently contested on the ground that 17 long years have elapsed and it will cause great hardship to start a proceeding afresh. We are unable to be persuaded to agree with the submission of the learned counsel for the respondent, particularly looking at the charges levelled against. In that view of the matter, though we are of the considered opinion that the order of dismissal was vitiated as the findings have been based on consideration of statement of the persons examined during the preliminary enquiry but the power of the employer to start a fresh proceeding cannot be taken away. Therefore, we dispose of the matter with the observation that it will be open to the competent authority to start a fresh disciplinary proceeding and conclude the same in accordance with law.

HARDEO MOTOR TRANSPORT COMPANY (M/S) Vs. STATE OF M.P.

3. The appeal is disposed of accordingly."

14. Keeping in view the totality of the facts and circumstances of the case and also keeping in view the Charge No.1, which was a very serious charge as the complainant himself has categorically denied the involvement of the petitioner in the incident which took place on 8.2.2005, the findings arrived at by the Inquiry Officer can safely be termed as perverse findings and the entire departmental inquiry stands vitiated in the matter.

15. Resultantly, this petition is allowed. The impugned orders dated 31.01.2006, 21.06.2006 and order dated 04.12.2006 are hereby quashed. The petitioner shall be entitled for all consequential service benefits except back wages. Normally, this Court would have granted an opportunity to the Department to proceed with the departmental inquiry afresh, however, in the peculiar facts and circumstances of the case as the complainant himself in the departmental inquiry has categorically stated in respect of the Charge No.1 that the petitioner was not the person who has committed any misconduct and he was not the person who has misbehaved and asked for the illegal gratification, no purpose would be served by initiating the disciplinary action afresh against the petitioner and, therefore, the respondents are hereby directed to reinstate the petitioner within thirty days from the date of receipt of the certified copy of this order.

Petition allowed.

I.L.R. [2010] M. P., 852

WRIT PETITION

Before Mr. Justice Arun Mishra & Mr. Justice S.C. Sinho

12 January, 2010*

HARDEO MOTOR TRANSPORT COMPANY (M/S)

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

A. Constitution, Article 14, Motoryan Karadhan Adhiniyam, M.P. 1991 [As amended w.e.f. 08.12.1999], Section 16(5) - *Constitutional validity - S. 16(3) provides for seizure of the vehicle in the case of default of payment of tax - Such provision has not been assailed - In S. 16(5) only an additional rider has been added that the Court taking cognizance of the offence shall not release such vehicle - Provision not repugnant to main S. 16 and Motor Vehicle Act, 1988 - Provision cannot be said to be violative of Article 14 of Constitution - Provision is constitutionally valid - Petition dismissed.* (Paras 8 to 10)

क. संविधान, अनुच्छेद 14, मोटरयान कराधान अधिनियम, म.प्र. 1991 [08.12.1999 से यथासंशोधित], धारा 16(5) - संवैधानिक विधिमान्यता - धारा 16(3)

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कर के भुगतान में व्यतिक्रम की दशा में वाहन के अभिग्रहण का उपबंध करती है – इस उपबंध को चुनौती नहीं दी गयी – धारा 16(5) द्वारा केवल एक अतिरिक्त उपबंध जोड़ा गया है कि अपराध का संज्ञान लेने वाला न्यायालय ऐसे वाहन को अभिमुक्त नहीं करेगा – उपबंध मूल धारा 16 और मोटर यान अधिनियम, 1988 से असंगत नहीं – उपबंध को संविधान के अनुच्छेद 14 का उल्लंघनकारी नहीं कहा जा सकता – उपबंध संवैधानिक रूप से विधिमान्य – याचिका खारिज।

B. Motoryan Karadhan Adhiniyam, M.P. (25 of 1991), Section 16, Criminal Procedure Code, 1973, Sections 451 & 457 - Motor vehicle seized u/s 16 of Act - Ss. 451 & 457 of Cr.P.C. are not attracted - Criminal Court will not have power to release the vehicle u/ss. 451 & 457 of Cr.P.C. (Paras 11 & 12)

ख. मोटरयान कराधान अधिनियम, म.प्र. (1991 का 25), धारा 16, दण्ड प्रक्रिया संहिता, 1973, धाराएँ 451 व 457 – अधिनियम की धारा 16 के अन्तर्गत मोटर वाहन अभिग्रहीत – द.प्र.सं. की धाराएँ 451 व 457 आकृष्ट नहीं होतीं – दण्डिक न्यायालय को द.प्र.सं. की धारा 451 व 457 के अन्तर्गत वाहन निर्मुक्त करने की शक्ति नहीं होगी।

Cases referred :

AIR 1997 MP 41, (2004) 1 SCC 320, 1998(2) MPLJ 249, (2006) 8 SCC 613, 1998(2) MPLJ 249, (2002) 10 SCC 283.

B.K. Rawat, H.C. Kohli, Subodh Pandey, Ashish Rawat, Amod Gupta, for the petitioners.

Deepak Awasthi, G.A., for the State.

ORDER

The Order of the Court was delivered by **ARUN MISHRA, J.** :- In these writ petitions the transporters have assailed the constitutional validity of the provision of Section 16(5) of M.P. Motoryan Karadhan Adhiniyam, 1991 (hereinafter referred to as Adhiniyam, 1991) as amended by Act No. 27 of 1999. Prayer has also been made to quash the seizure of the vehicle in question.

2. Facts are being referred from W.P. No. 1584/2005. It is averred in the petition that petitioner carries on the Passengers Transport Business and is holding a regular All India Tourist Permit, which was valid from 3.1.2004 to 2.1.2009. Advance tax has been paid every month as per the provision of the Adhiniyam, 1991, which is required to be paid by 10th day of every month. After payment of tax, the certificate in Form J has also been issued by the Tax Officer, Seoni. No tax was due in respect of the vehicle in question i.e. tourist bus. The bus was going from Seoni to Nagpur, Shegaon, Ajanta, Alora, Jalgaon, Indore, Ujjain, Bhopal, Pachmadhi and Chhindwara. The bus was checked by respondent No. 3 Transport Sub Inspector and in spite of production of all the documents including the permit, he seized the vehicle under sections 66/192-A and 146/196 of the Motor Vehicles Act on the allegation of plying the vehicle without permit. In the seizure memo and Panchnama, Section 16(3) of the Adhiniyam, 1991 was mentioned. It has also

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been mentioned that no tax was due. Tourist vehicle was checked on 1.3.2005, on which date no tax was due nor any demand notice had been issued after due assessment, as contemplated under section 8(3)(4) of Adhiniyam, 1991. It is submitted that tax due means issuance of demand notice after due determination of the tax and in the instant case there was no such determination, hence it could not be said that tax was due. Under the prescribed form U-1, for demand notice, 7 days' time is precondition for detention of the vehicle under section 16(3) of the Adhiniyam, 1991. Vehicle could not have been seized invoking the provision of Section 16(3) of Adhiniyam, 1991. Seizure of the vehicle was patently illegal and without jurisdiction. Petitioner had filed an application before the concerned authority for releasing the vehicle, it was not released. An application was also filed before the CJM to release the vehicle on Supurdnama. The Magistrate rejected the application vide order (P-7) dated 17.3.2005. It is submitted that registration certificate could have been seized not the vehicle. Reliance has been placed upon the decision of this Court in *Nikhata Afros and others Vs. Union of India and others* – AIR 1997 MP 41. It is submitted that section 16(5) has been added to the Adhiniyam, 1991 by which the Court's power has been curtailed which has been conferred upon the Court under sections 451 and 457 of Cr.P.C. The State legislature has no competence to curtail the powers of the Court, which can only be done by the Parliament. Thus, amendment is violative of Article 254(2) of the Constitution of India. The Magistrate ought to have exercised the power and ought to have examined the correctness of allegation about the tax due. Thus the amendment in subsection (5) of Section 16 of Adhiniyam, 1991 is ultra vires. The amendment made to section 16 about confiscation of the vehicle has already been quashed by the Apex Court in *M.P. AIT Permit Owners Association and another Vs. State of M.P.* - 2004(1) SCC 320. Prayer has also been made to clarify the Full Bench decision of this Court in *State of M.P. Vs Rakesh Kumar Gupta* - 1998(2) MPLJ 249.

3. In the return filed by the respondents in W.P. No. 8818/2006, which has been adopted in all cases, it is contended that it is within the competence of State Legislature to enact the provisions like Section 16(5) of Adhiniyam, 1991. The said provision is not violative of Article 254(2) of the Constitution. Property has not been produced before the Criminal Court as such Sections 451 and 457 of Cr.P.C. 1973 are not applicable. The provision of Section 16(5) of Adhiniyam, 1991 is not repugnant to Sections 66 and 192-A of the Motor Vehicles Act. It is further submitted that section 16 of the Adhiniyam, 1991 makes a provision regarding power of entry, seizure and detention of motor vehicle in case of non payment of tax. Section 16(3) provides that the Taxation Authority or any other officer authorized by the State Government in this behalf may, if it or he has reason to believe that a motor vehicle has been or is being used without payment of tax, penalty or interest due, seize and detain such motor vehicle and for the

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purpose take or cause to be taken any step as may be considered proper for the temporary safe custody of such motor vehicle and for the realization of tax due. Section 16(3) is intended as a step for recovery of the tax, penalty or interest due and the vehicle is detained until such time as such tax or other liabilities are realized. Vehicle has been seized for that purpose, by itself will not result in confiscation of the vehicle. Provision cannot be said to be penal. Provision does not encroach upon the judicial power of the Court taking cognizance of the offence. There are two categories of motor vehicles viz contract carriages and state carriages, for which different rates of taxation is applicable and unless such tax has been paid in respect of usage no permit is available and operation of vehicle is without such permit and no tax due to the State has been paid. It is to curb this evasion that the provisions of Section 16(3) and 16(5) have been introduced. Same cannot be said to be beyond the legislative competence of the State. Other facts have also been denied. Merely by the fact that Sections 16(6), 16(7) and 16(8) of Adhiniyam, 1991 have been declared ultra vires by the Apex Court, does not affect the validity of provision of Section 16(5) of Adhiniyam, 1991.

4. Sarva Shri B.K. Rawat, H.C. Kohli, Subodh Pandey, Ashish Rawat,, learned counsel appearing for the petitioners have submitted that once Apex Court has declared the provisions of Sections 16(6), 16(7) and 16(8) of Adhiniyam, 1991 as ultra vires, on the same analogy provision of Section 16(5) deserves to be declared ultra vires which creates unconstitutional embargo on the power of the Court to make judicial review of the action. Reliance has been placed on the decision of *Nikhata Afros and others Vs. Union of India and others* (supra) to submit that only the registration certificate ought to have been seized not the vehicle before assessment is made, as apparent from Form U-1 and U-2 prescribed under Rule 17 of M.P. Motor Vehicle Rules read with section 16(3) of the Adhiniyam, 1991. Since assessment has not been done earlier in point of time, drawing of Panchnama and seizure of the vehicle was impermissible act. Without due opportunity, vehicle cannot be seized. Reliance has also been placed upon the provision of Section 130(3) of the Motor Vehicles Act. It is also submitted that provision of Section 16(5) of Adhiniyam, 1991 is extremely harsh and vehicle of 10-20 lakhs was seized for a paltry amount of tax, which may ultimately be found due. The provision is not being followed in true spirit, is being grossly misabused and at the same time it takes away power of the Court to look into the matter, thus, it deserves to be declared arbitrary being violative of Article 14. Reliance has been placed on a decision of Apex Court in *Hardev Motor Transport Vs. State of M.P. & others* - (2006) 8 SCC 613 and other decisions to be referred later.

5. Shri Deepak Awasthi, learned Government Advocate appearing on behalf of the State has supported the vires of the provision of Section 16(5) of Adhiniyam, 1991. He has submitted that Section 16(3) of Adhiniyam, 1991 provides for seizure

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of the vehicle in the case of default of payment of tax. Said provision has not been assailed. Adhiniyam, 1991 which contains aforesaid provision has received assent of the President. Even before enactment of Section 16(5) of Adhiniyam, 1991, Full Bench of this Court in *State of M.P. Vs Rakesh Kumar Gupta* (supra) has held that provision of section 451 and 457 are not applicable in such cases where property has not been produced before the Criminal Court. Thus even in the absence of provision of section 16(5) the Full Bench of this Court has opined that once vehicle has been seized, it can be released only by the authorities or in the writ jurisdiction by this Court. Criminal Court has no power to release the vehicle under section 451 and 457 of Cr.P.C. Thus introduction of section 16(5) of Adhiniyam, 1991 has not made any change in the position, which was existing before amendment was incorporated. Even otherwise when the Apex Court has dealt with the question in *Hardev Motor Transport Vs. State of M.P. & others* (supra), it has been observed by the Apex Court that even taking away of the Court's power under section 16, cannot be said to be repugnant to Article 14 of the Constitution. Thus counsel has submitted that the submission raised as to the legality of the action taken, cannot be a ground to declare the provision as ultra vires. The relevant document must accompany the vehicle in question at the time when it is intercepted. In case documents are not accompanying the vehicle in question, there may be a reason for formation of belief as contemplated under section 16(3) of the Motor Vehicles Act. On that basis only, Panchnama is drawn and notice is issued. It is not that assessment has to be made after intercepting the vehicle first and thereafter notice has to be issued for the purpose of seizure of the vehicle, that will make the provision impracticable and inefficacious.

6. First we refer to the provision of Section 16 of Adhiniyam, 1991. Section 16 of Adhiniyam, 1991 is quoted below :-

16. Power of entry, seizure and detention of Motor Vehicle in case of nonpayment of tax.- (1) The Taxation Authority or any other officer, authorized by the State Government in this behalf, may at all reasonable time enter into and inspect any motor vehicle or premises where he has reason to believe that a motor vehicle is kept for the purpose of verifying whether the provisions of this Act or any rules made thereunder are being complied with.

Provided that no officer shall be authorised under this sub-section with respect to motor cycles and motor cars.

(2) Any person driving a motor vehicle in any public place shall, on being so required by the Taxation Authority or any officer authorised in this behalf by the State Government, produce -

- (a) the certificate of registration
- (b) the token in evidence of the payment of tax; and

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(c) the certificate of insurance relating to the use of the vehicle and shall keep such vehicle stationary for such time as may be required by such authority or officer to satisfy himself that the tax in respect of such motor vehicle has been paid:

Provided that in the case of a motor vehicle other than a transport vehicle, the certificates so required shall be produced for inspection within such period and in such manner as may be prescribed under sub-section (4) of section 130 of the Motor Vehicles Act, 1988.

(3) The Taxation Authority or any officer authorised by the State Government in this behalf may if it/he has reason to believe that a motor vehicle has been or is being used without payment of tax, penalty or interest due, seize and detain such motor vehicle and for this purpose take or cause to be taken any step as may be considered proper for the temporary safe custody of such motor vehicle and for the realisation of tax due.

(4) Where a motor vehicle has been seized and detained under sub-section (3), the owner or the person incharge of such vehicle may apply to the Taxation Authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and if such authority or officer, after verification of such documents, is satisfied that no amount of tax is due in respect of that vehicle, may by an order in writing release such vehicle.

(5) Where a motor vehicle has been seized and detained under sub-section (3), the Court taking cognizance of the offence shall not release such vehicle.

(6) Subject to the provisions of sub-section (8), where, the taxation authority upon receipt of report about the seizure of the vehicle under sub-section (3) is satisfied that the owner has committed offence under Section 66 read with Section 192-A of that Motor Vehicles Act, 1988 of plying vehicle without permit and he may by order in writing and for reasons to be recorded confiscate the vehicle seized under said sub-section. A copy of order of confiscation shall be forwarded without any undue delay to the Transport Commissioner.

(7) No order of confiscating any vehicle shall be made under sub-section (6) unless the Taxation Authority :-

(a) sends an intimation in the form prescribed about initiation of

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proceedings for confiscation of vehicle to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issues a notice in writing to the person from whom the vehicle is seized and to the registered owner;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation; and

(d) gives to the officer effecting the seizure and the person or the persons to whom notice has been issued under clause (b), a hearing on due date to be fixed for such purpose.

(8) No order of confiscation, under sub-section (6), of any vehicle shall be made if any person referred to in clause (b) of sub-section (7) proves to the satisfaction of the Taxation Authority that such vehicle was used under valid documents required under the Act.

7. Provisions of Sections 16(6), 16(7) and 16(8) of Adhiniyam, 1991 have been declared ultra vires by the Apex Court in *M.P. AIT Permit Owners Association and another Vs. State of M.P.* (supra). In *Hardev Singh Vs. State of M.P. And others* (supra) entry IV (g) of Sch. I read with Explan.(7) of Sch. I has been declared to be unconstitutional.

In *M.P. AIT Permit Owners Association and another Vs. State of M.P.* (supra) the Apex Court has dealt with the offence under section 66 read with Section 192-A of the Motor Vehicles Act which provides for fine as well as imprisonment. Additional punishment of confiscation of the vehicle prescribed under section 16(6) of the Adhiniyam, 1991 for the same offence was held to be repugnant to the Central Act. It was also observed that in the absence of assent of the President, aforesaid provisions of the Adhiniyam, 1991 are invalid and liable to be quashed. The Apex Court in *Hardev Motor Transport Vs. State of M.P. & others* (supra) has observed thus :-

19. The power of the State of Madhya Pradesh to seize a vehicle in terms of Section 16(6) of the 1991 Act came up for consideration before this Court in *M.P. AIT Permit Owners Assn. v. State of M.P.* - (2004) 1 SCC 320. The question which arose for consideration therein was that having regard to the fact that the parliamentary Act provides for a lesser penalty as specified in Section 192-A thereof, can the State by reason of the taxing statute impose a higher penalty? It was held: (SCC pp. 325-26, para 9)

"9. Section 192-A of the MV Act provides that if a motor vehicle is driven in contravention of Section 66(1), that is, if a vehicle is

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driven or caused to be driven as a transport vehicle without permit, or in contravention of any condition thereof relating to the route on which or the area in which or the purpose for which the vehicle may be used, the user is punishable with fine for the first offence and imprisonment for the subsequent offence but this section does not provide for confiscation of the vehicle. Section 16(6) of the Act provides that subject to the provisions of sub-section (8), where upon receipt of report about the seizure of the vehicle under sub-section (3), the taxation authority is satisfied that the owner has committed offence under Section 66 read with Section 192-A of the MV Act of plying vehicle without permit and he may by order in writing and for reasons to be recorded confiscate the vehicle seized under the said provision. Under Section 16(3) of the Act, a vehicle seized for non-payment of tax or other dues is liable to be returned on showing that tax has been paid. Thus, if tax with regard to the seized vehicle is paid that vehicle has got to be released. So far as the link that is sought to be established with taxation procedures is concerned, it snaps the moment tax is paid and vehicle is released. In such an even also motor vehicle can be confiscated on a report that such vehicle has been seized. The cause or basis for confiscation of motor vehicle is driving such vehicle contrary to Section 66 of the MV Act read with Section 192-A of the MV Act and a report of seizure under Section 16(3) of the Act."

20. The said decision, however, was rendered on the premise that the State Act is repugnant to the Central Act.

21. It is, however, not in dispute that the 1991 Act has received the assent of the President of India. While considering the question of constitutionality of the provisions of the 1991 Act, therefore, Article 254 (2) of the Constitution of India may not have any role to play.

It is apparent from the aforesaid decision that Adhiniyam, 1991 has received the assent of the President of India and while considering the question of constitutionality of the provisions of the Adhiniyam, 1991, Article 254 (2) of the Constitution of India may not have any role to play.

8. With respect to the provisions of Section 16, in *Hardev Motor Transport Vs. State of M.P. & others* (supra) the Apex Court has observed that even the power of the Court has been taken away to release the vehicle unless tax is paid, and the court can satisfy itself as to whether a tax is paid or not only on the receipt of the certificate issued by the transport authorities of the State. Merely because a wide power has been conferred on the authorities, the same by itself would not lead to a presumption that the same is capable of misuse or on that count alone

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the provisions of Article 14 of the Constitution of India would be attracted. But, when a statute confers a wide power upon a statutory authority, a closer scrutiny would be required. The Apex Court has laid down thus :-

35. The transport authorities of the State indisputably have a power to check a vehicle so as to ascertain whether payment of tax is being evaded. They have been conferred with the power to detain a vehicle. They can release the vehicle only when tax as demanded is paid. Even the power of the court to release the vehicle has been taken away unless tax is paid and the court can satisfy itself as to whether a tax is paid or not only on the receipt of the certificate issued by the transport authorities of the State. The power of the transport authorities, therefore, is very wide. We, however, do not mean to suggest that only because a wide power has been conferred the same by itself would lead to a presumption that the same is capable of misuse or on that count alone the provisions of Article 14 of the Constitution of India would be attracted. But, when a statute confers a wide power upon a statutory authority, a closer scrutiny would be required.

9. The Apex Court in *Hardev Motor Transport Vs. State of M.P. & others* (supra) has further held that the appellants have paid tax, they have paid tax as specified for in permits granted in their favour as a contract carriage. The rate of tax payable by a contract carriage is higher than the rate of tax imposed on a stage carriage. For non-payment of tax or for payment of tax for a wrong purpose, a penalty can be imposed but it is difficult to conceive that a different rate of tax which is not contemplated under section 3 of 1991 Act can be imposed by way of penalty. The executive while fixing a rate of duty cannot be permitted to usurp the legislative power and make a provision which would be inconsistent with the substantive provision of the statute. In other words, the provisions contained in the Schedule must be in consonance with the substantive provisions in the main Act. It must be in conformity with the charging section. As in terms of Section 3 of the 1991 Act, the legislature directed that the tax can be levied on motor vehicles subject to the rates fixed; by taking recourse to Explanation (7), firstly no new definition could be introduced and, secondly, an owner of a vehicle having one kind of permit could not have been treated as having no permit at all only because the transport authorities have reasons to believe that the conditions of permit have been violated. For the aforesaid reasons, clause-(g) of Entry IV of the First Schedule of the Adhiniyam of 1991 as amended by M.P. Motoryan (Sanshodhan) Adhiniyam, 2004 read with Explanation (7) of the First Schedule has been declared to be unconstitutional.

10. In the instant case the provision which has been inserted of Section 16(5), cannot be said to be repugnant to the main section. The provision of Section 16(3)

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of Adhiniyam, 1991, is clear. It clearly provides that the Taxation Authority or any officer authorised by the State Government in this behalf may if it/he has reason to believe that a motor vehicle has been or is being used without payment of tax, penalty or interest due, seize and detain such motor vehicle and for this purpose take or cause to be taken any step as may be considered proper for the temporary safe custody of such motor vehicle and for the realisation of tax due. Vires of provision of Section 16(3) has not been assailed. In Section 16(5) only an additional rider has been added that the Court taking cognizance of the offence, shall not release such vehicle.

11. In *State of M.P. Vs. Rakesh Kumar Gupta* – 1998(2) MPLJ 249, on question being referred to larger Bench whether Criminal Court can exercise the power under sections 451 and 457 of Cr.P.C in view of the provision of Sections 16(3) and 16(4) of Adhiniyam, 1991, the Full Bench of this Court considering rules 16 and 17 of M.P. Motoryan Karadhan Rules, has laid down thus:-

26. What thus, emerges can be summed up as under :-

(a) Taxation Authority or any officer authorised by state Government in this behalf, can seize and detain a motor vehicle on “reason to believe” that there is fault or default in payment of amount of tax under section 16(3) of Adhiniyam. Even authorised officer, be it a Police Officer, has to operate under Adhiniyam and not Code.

Applicability of certain provisions of the Code for search or seizure is a matter of manner and procedure and does not render section 451/457 of the Code operative in such cases.

(b) Application for release of the vehicle when seized and detained, lies to aforesaid authority and such authority is empowered to release on satisfaction that *no tax is due* in terms of section 16(4) of the Adhiniyam. The “Object of Tax” is not liable to be frustrated.

(c) Aggrieved person can file an appeal under section 20 of the Adhiniyam on deposit of amount in question.

(d) Except sections 451 and 457 of the Code, no other provision is shown to exist for the purpose. But section 451 of the Code gets attracted only “*when property is produced before any Criminal Court during any inquiry or trial*” and is concerned with “*proper custody of such property pending conclusion of the inquiry or trial*”. Section 457 of the Code comes into play when seizure is by a *Police Officer* who reports to a Magistrate under the Code. It empowers the Magistrate to make an order respecting disposal or delivery “*to the person entitled to the*

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possession thereof". On seizure under section 16(3), section 451 is inapplicable till stage of inquiry or trial in a Criminal Court and section 457 of the Code cannot be invoked unless seizure is by a police officer and is reported under the Code and some one is "entitled". Person in arrear and in error is not prima facie "entitled".

These two sections, thus, do not apply till requisite conditions are shown to be satisfied. At the infant stage, recourse to Criminal Court is impermissible. Hence, only section 16(4) and section 20 of Adhiniyam held to be efficacious are applicable. This power cannot be usurped by any Criminal Court.

(e) "Statutory Forums" have to be approached. Resort to section 451 or 457 of the Code is thus, impermissible. *The Criminal Court thus, does not possess jurisdiction to entertain prayer for interim release of the vehicle and grant relief under the Code.* Section 19 or Rules do not indicate existence of jurisdiction of Criminal Court in case of action under section 16(3) of the Adhiniyam.

The Full Bench of this Court has laid down that Sections 451 and 457 of Cr.P.C. cannot be said to be operative in the matter of search and seizure under the provision of Section 16(3) of Adhiniyam, 1991. It has also been laid down that when a vehicle has been seized and detained, it is for the authority to release on satisfaction that "no tax is due" in terms of section 16(4) of the Adhiniyam, 1991. The object to tax is not liable to be frustrated. Aggrieved person can file an appeal under Section 20 of Adhiniyam, 1991 on deposit of amount in question. Section 451 of CrPC is not attracted nor Section 457 of CrPC is attracted in such cases. Thus even before introduction of Section 16(5) of Adhiniyam, 1991 by way of amendment, the Full Bench has opined that provisions of Section 451 and 457 of CrPC are not applicable. Thus, the position remained the same. Now there is statutory introduction of provision, otherwise also provisions of Sections 16(3) and 16(4) which existed prior to insertion of Section 16(5), have been interpreted to mean that the Criminal Court will not have the power to release the vehicle under sections 451 and 457 of CrPC. The Apex Court in *Hardev Motor Transport Vs. State of M.P. & others* (supra) has considered the aforesaid aspect and has observed in Para-35 that if power of Court has been taken away, that cannot be said to be violative of Article 14 of the Constitution of India. Reliance has been placed on a decision of this Court in *Nikhata Afros and others Vs. Union of India and others* (supra) in which Division Bench of this Court has considered the provision of Section 207 of the Motor Vehicles Act and as provided in the section itself, has observed that in the case of violation when a vehicle has been used without registration certificate, permit etc., vehicle may be seized. Discretion has also been given to the authority, for said violation instead of seizing the vehicle, to seize the certificate of registration of vehicle and shall issue acknowledgment

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in respect thereof. But in the case of non payment of tax, aforesaid provision is not attracted, provisions of sections 16(3) and 16(4) of Adhiniyam, 1991 are applicable, vires of which has not been assailed in the instant petitions, thus we find that the aforesaid observation made by this Court is in the context of Section 207 of Motor Vehicles Act, thus it cannot be laid down that seizure of registration particulars would enough when on requisite satisfaction the authority under section 16(3) of Adhiniyam, 1991 is empowered to seize and detain the vehicle till such time tax is paid. Decision in *Sunderbhai Ambalal Desai Vs. State of Gujarat* – (2002) 10 SCC 283 has also been relied upon. Said decision was not rendered in the context of Adhiniyam, 1991. Motor vehicle was involved in the criminal case under various provisions of IPC, in that context Apex Court has laid down the principles to be observed for exercising the discretion under sections 451 and 457 of CrPC. There is no dispute with the aforesaid principles, however, question involved in the present petitions is whether provision of Section 16(5) is ultra vires, which in our considered opinion, cannot be said to be constitutionally invalid in any manner.

12. It was also submitted by the counsel for the petitioners relying upon Rule 17 of M.P. Motoryan Karadhan Rules and Form U-1 and U-2 that assessment has to be made first, thereafter Panchnama regarding seizure can be drawn. We are not ready to accept the aforesaid submission. Satisfaction has to be reached under section 16(3) on the basis of documents which are available at the time when the search and seizure is made and if the authority or authorised officer has the reason to believe that there is evasion of tax and tax has not been paid is enough to seize the vehicle, no doubt, reasons have to be culled out as prescribed in the form for reaching the satisfaction while recording the Panchnama. Provision of Rules and prescribed form has to be complied with. However, such power has to be exercised after making close scrutiny of the case. As wide power has been given to the authority, it should be exercised fully in consonance with the provisions of Adhiniyam and the rules. Vehicles have already been released by interim order passed by this Court. In the cases where assessment has not been finalized so far, respondents are directed to finalize the assessment. In case petitioners are aggrieved by the same, they can prefer the appeal under section 20 of Adhiniyam.

13. Resultantly, we hold that provision of Section 16(5) is intra vires. Challenge to the constitutional validity of the provision stands repelled. Provision cannot be said to be violative of Article 14 of the Constitution of India. Writ petitions being devoid of merit, are hereby dismissed. Parties to bear their own costs as incurred of these petitions.

Petition dismissed.

VISHVANATH MISHRA Vs. CHIEF M.D., WESTERN COAL FIELDS LTD.

I.L.R. [2010] M. P., 864

WRIT PETITION

Before Mr. Justice P.K. Jaiswal

13 January, 2010*

VISHVANATH MISHRA

Vs.

CHIEF MANAGING DIRECTOR,

WESTERN COAL FIELDS LTD. & ors.

... Petitioner

... Respondents

A. Service Law - Constitution, Article 226 - Disputed facts - Cannot be decided in writ petition - Application filed for correction of date of birth along with transfer certificate, scholar's register and duplicate copy of the mark-sheet of Board of Secondary Education - These documents were never submitted before the respondents for correction of date of birth - Their authenticity is disputed - Disputed questions of fact cannot be decided in writ petition - Petition dismissed. (Para 7)

क. सेवा विधि - संविधान, अनुच्छेद 226 - विवादग्रस्त तथ्य - रिट याचिका में विनिश्चित नहीं किये जा सकते - जन्म तिथि के सुधार के लिए आवेदन स्थानांतरण प्रमाण पत्र, छात्र रजिस्टर और माध्यमिक शिक्षा मण्डल की अंकसूची की दूसरी प्रति सहित पेश किया गया - ये दस्तावेज जन्म तिथि में सुधार के लिए प्रत्यर्थियों के समक्ष कभी पेश नहीं किये गये - उनकी प्रमाणिकता विवादग्रस्त - तथ्य के विवादग्रस्त प्रश्न रिट याचिका में विनिश्चित नहीं किये जा सकते - याचिका खारिज।

B. Service Law - Correction of date of birth - Delay - Application for correction of date of birth filed after 34 years of service - No reliable documentary evidence adduced in support of claim - No explanation for delayed action - No direction can be issued - Petition dismissed. (Para 8)

ख. सेवा विधि - जन्म तिथि का सुधार - विलम्ब - जन्म तिथि के सुधार के लिए आवेदन सेवा के 34 वर्ष बाद पेश किया गया - दावे के समर्थन में कोई विश्वसनीय दस्तावेजी साक्ष्य पेश नहीं की गयी - विलम्बित कार्यवाही के लिए कोई स्पष्टीकरण नहीं - कोई निदेश जारी नहीं किया जा सकता - याचिका खारिज।

C. Service Law - Correction of date of birth - Alternative remedy - Writ Petition filed neared the age of superannuation for issuing direction for correction of date of birth - Petitioner is a workman under the provisions of Industrial Disputes Act, 1947 - He has an alternative remedy of raising the dispute under the provisions of Industrial Disputes Act, 1947 - Petition dismissed. (Para 8)

ग. सेवा विधि - जन्म तिथि का सुधार - वैकल्पिक उपचार - जन्म तिथि के सुधार के लिए निदेश जारी करने के लिए अधिवर्षिता की आयु के निकट रिट याचिका पेश की गयी - याची औद्योगिक विवाद अधिनियम, 1947 के उपबंधों के अन्तर्गत कर्मकार - उसे औद्योगिक

विवादित अधिनियम, 1947 के उपबंधों के अन्तर्गत विवाद उठाने का वैकल्पिक उपचार है - याचिका खारिज।

Cases referred :

W.P. No.6913/2009(S) decided on 20.07.2009, (2000) 8 SCC 696.

Suraj Verma, for the petitioner.

Shishir Dixit, for the respondents.

ORDER

P.K. JAISWAL, J. :- Heard.

Grievance put-forth by the petitioner in the present writ petition under Article 226 of the Constitution of India is against an action of respondents whereby they have declined to rectify the date of birth recorded in Form 'B'.

2. Facts briefly stated are that the petitioner was appointed as Clerk Grade-II with the respondent No. 1 Western Coalfields Limited on 18.7.1975. At the time of his initial appointment "16.7.1952" was wrongly entered as his date of birth in Form PS-III (Annexure-R-2) and Form PS-IV Annexure-R-3). It is submitted that at the time of entry in service his date of birth was 1.4.1956 whereas the same was wrongly recorded as 16.7.1952. In support of the said contention he drew my attention to the Scholar's Register which is maintained by Principal, Govt. Higher Secondary School, Jaisinghnagar, District Shahdol (M.P.) and duplicate copy of Higher Secondary School Certificate Examination issued in April, 1983. Annexure-P-4 is Form 'B'. In column No.4 of this form his date of birth is recorded as 16.7.1952. Annexure-P-5 is letter dated 7.6.1987 issued by respondent No. 2 to the petitioner in which the date of birth of the petitioner is recorded as 16.7.1952. During all these years petitioner never raised any dispute regarding his date of birth though he was in service since 18.7.1975 and by Annexure-P-5 letter of respondent No. 2 dated 7.6.1987 he came to know in the year 1987 itself that his date of birth is recorded as 16.7.1952 but he never challenged the same. As per para 5.6 of the writ petition, he made a representation on 25.12.2001 and requested the authorities for correction of his date of birth, but no acknowledgment of the department nor any postal receipt has been filed to prove that representation was actually made on 25.12.2001. Similar is the fact of representation dated 13.11.2002. After the period of 34 years on 17.12.2009 he for the first time made a so-called representation for correction of his date of birth Annexure-P-8(a) and much prior to the date of said representation filed this writ petition on 3.3.2009. It is very strange that along with writ petition he filed copy of representation dated 17.12.2009 and also made such averment in para 5.7 of the writ petition which is supported by the affidavit of the petitioner. All these facts clearly falsify the stand of the petitioner that in respect of his date of birth he earlier made representations on 25.12.2001 and 13.11.2002 respectively. The last representation dated 17.12.2009 is ante dated because the same could not be filed along with the writ petition which was filed on 3.3.2009.

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3. With the aforesaid pleadings learned counsel for the petitioner submits that correct date of birth of the petitioner is 1.4.1956 and prayed that respondents be directed to correct his date of birth in service record and further direct the respondents to increase service tenure of the petitioner according to his correct date of birth.

4. The respondents have filed their reply and in para 11 of the reply they denied the receipt of so-called representations. It is contended that the applications were never received by the respondents and neither they appended any seal of the concerned office. It is also contended that documents Annexures-P-1 to P-3 were never furnished by the petitioner at the time of his joining the services and hence no credence can be given to these certificates at the fag end of petitioner's service. The stand of the respondent-Department is that at the time of initial appointment of the petitioner he has informed the respondent-Department that his date of birth is 16.7.1952 and on that basis Form 'B' register was filled in, which was counter-signed by him. No objection was raised by the petitioner at the time of filling of the said register. The respondents also filed last pay certificate, PS III and PS IV Forms and all these documents show the petitioner's date of birth to be 16.7.1952. All these documents have been counter-signed by the petitioner which clearly goes to show that his date of birth is 16.7.1952.

5. The submission of learned counsel for the petitioner was that since there was wrong date of birth entered into Form 'B' the petitioner preferred representation requesting the respondents to correct the date of birth in pursuance to the provisions contained in Implementation Instructions issued by the respondents. The petitioner relies upon the decision rendered by this Court in W.P.No.6913/2009 (S) (*Mohd. Shabbir Qureshi v. Chief Managing Director, Western Coalfields Limited and others*) decided on 20th July, 2009 to substantiate the contention that the respondents are duty bound to adhere to Implementation Instruction No.76. It is accordingly urged that the respondents be directed to correct the date of birth of the petitioner on the basis of duplicate matriculation certificate issued in the year 1983.

6. On the other hand, the respondents opposed the plea put-forth by the petitioner and contended that the petitioner's date of birth is rightly recorded in the record maintained by the department. It is further contended that the petition has been filed at a belated stage and the date of birth as to what it should be is a disputed question of fact and the same cannot be decided in a writ petition. Clause B of the Implementation Instruction No. 76 lays down procedure for determination/verification of date of birth in respect of existing employees. The procedure has been prescribed by the respondent-Department under National Coal Wage Agreement-II, III and IV for determination/verification of the age of the employees and for resolution of the dispute of cases of service record. The respondents are

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disputing the duplicate Higher Secondary Mark-sheet annexed along with the writ petition and contended that on the basis of material supplied by the petitioner at the time of his joining the date of birth is correctly recorded as 16.7.1952 and since 1975 till 3.3.2009 no objection was ever raised by the petitioner, therefore, after period of 34 years the same cannot be decided in this writ petition nor the decision cited by the petitioner in the case of *Mohd. Shabbir Qureshi* (supra) will be applicable in the present facts and circumstances of the case.

7. In the present case the core question is whether the two transfer certificates obtained by the petitioner from the Head Master, Govt. Middle School, Khamdand, district Shahdol to the effect that he prosecuted his studies from Class-6th to Class-8th in which his date of birth is recorded as 1.4.1956, Scholar's Certificate of office of Govt. Higher Secondary School, Jaisinghnagar and duplicate copy of the mark-sheet of Higher Secondary School Certificate Examination held in 1983 in which the petitioner was declared as failed should be accepted and the date of birth entered therein should be accepted as conclusive. This question is essentially one of fact. Determination of the question requires detailed enquiry into relevant factual matters. If the petitioner was basing his case on these documents then it was incumbent upon him to place evidence on record, materials from which a conclusion can be reasonably drawn that the date of birth as entered in the certificates is the correct one. There is no material on record to show that when these documents were issued to the petitioner, he had produced a copy of the same when he entered service in the respondents in support of his age and if so why was the document not sent with the service records. These are some of the questions consideration of which will depend on the evidence, either oral or documentary to be placed by the parties. These are duplicate copies of the certificates issued by the concerned school and Board of Secondary Education in the year 2004 and 1983, respectively. All these documents were never submitted before the respondents for correction of date of birth. Their authenticity is disputed by the respondents. Implementation Instruction No.76 was issued by the respondents laying down the procedure for determination/verification of the age of the employees in which procedure for determination/verification of age of employees is laid down. Under para 'A' the manner of determination of age at the time of appointment is laid down. Under para 'B' are laid down the procedures to be followed in cases of determination of date of birth in respect of existing employees. Under sub-para (i) of para 'B' the case of the existing employee having a Matriculation Certificate or Higher Secondary Certificate issued by the recognised University or Board or Middle Form Certificate issued by the Board of Education and/or Department of Public Instruction should be treated as the correct date of birth provided the documents are issued by the University/Board prior to the date of the employment. Under sub-para (i) (b) of para 'B' it is provided that mining sirdarship, windup engine or similar other statutory certificate

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where the Manager had to certify the date of birth will be treated as authentic. Provided that where both the documents mentioned in (i) (a) and (i) (b) above are available the date of birth in (i) (a) will be treated as authentic. In clause (ii) of para 'B' it is specifically stated that wherever there is no variation in records such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the management. The management, after being satisfied on the merit of the case will take appropriate steps for corrections through the Age Determination Committee/Medical Board. In 'C', 'D' and 'E' the procedures to be followed by the Age Determination Committee/Medical Board for determination of age of an employee are laid down. Here in the present case transfer certificate (Annex.P-1), Scholar's Register (Annex.P-2) and duplicate copy of the mark-sheet of Board of Secondary Education, M.P., Bhopal (Annex. P-3) were never submitted before the respondents in appropriate time and the same were kept by the petitioner with himself and for the first time he filed these documents along with the writ petition filed on 3.3.2009. All the records of the Management clearly show that the date of birth of the petitioner is 16.7.1952 and, therefore, at this stage no direction can be issued to the respondents to consider the case of the petitioner, nor these disputed questions of fact can be decided in this writ petition. The petitioner is a workman. Under the provisions of Industrial Disputes Act, 1947 he is having alternative and efficacious remedy for raising a dispute.

8. The petitioner made incorrect statement in para 5.6 of the writ petition and filed a representation which is ante dated and had procured much prior to the date of filing of the writ petition. In the instant case for the first time, more than three decades after the petitioner had entered into service make an application for correction of his date of birth without adducing any reliable documentary evidence in support of his claim and without in any manner explaining as to why the petitioner had taken no action for all these thirty years. He allowed the matter to rest till he neared the age of superannuation. The petitioner slept over his right to get the date of birth altered for more than thirty four years and woke up from his deep slumber on the eve of his retirement only. On these facts no relief as prayed in this petition can be granted to him. The writ petitioner has an alternative remedy of raising a dispute under the provisions of Industrial Disputes Act, 1947.

9. The Apex Court in the case of *G.M. Bharat Coking Coal Ltd., West Bengal v. Shib Kumar Dushad and others* (2000) 8 SCC 696 held that in a case where the controversy over the date of birth of an employee has been raised long after joining the service and the matter has engaged the attention of the authority concerned and has been determined by following the procedure prescribed under the service rules or general instructions issued by the employer and it is not the case of the employee that there has been any arithmetical mistake or typographical error patent on the face of the record, the High Court in exercise of its extraordinary

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jurisdiction under Article 226 of the Constitution should not interfere with the decision of the employer. The reason as stated in the judgment of the Apex Court in the case of *G.M. Bharat Coking Coal Ltd., West Bengal v. Shib Kumar Dushad and others* (supra) is as follows :-

“17. The date of birth of an employee is not only important for the employee but for the employer also. On the length of service put in by the employee depends the quantum of retiral benefits he would be entitled to. Therefore, while determining the dispute in such matters courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly, will upset the date recorded in the service records maintained in due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of a clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of the date of birth entered in the service record and the courts are inclined to pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended for the reason that the court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in the service record. Such interim orders create various complications. Anticipated vacancy for which the employee next in the line has been waiting does not materialise, on account of which the junior is denied promotion which he has all along been led to believe will be his due on the retirement of the senior.”

10. On the analysis and the discussions in the foregoing paragraphs, I am of the considered view that belated petition filed by the petitioner at the time of his retirement, suppressing material fact of filing of representation and letter cannot be entertained at this stage and the same is accordingly dismissed with costs. Counsel fee Rs.3,000/-.

Petition dismissed.

ASHOK KUMAR SHUKLA V& STATE OF M.P.

I.L.R. [2010] M. P., 870

WRIT PETITION*Before Mr. Justice Rajendra Menon*

18 January, 2010*

ASHOK KUMAR SHUKLA

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

A. Service Law - Public Services (Promotion) Rules, M.P. 2002, Rule 7(4) - Number of vacancies for promotion during the course of year shall be worked out after taking into account the existing and anticipated vacancies on account of retirement and promotions to higher cadres/part of service/higher pay scale of posts, vacancies arising out of deputation for periods exceeding one year - The intention when rule speaks about vacancies arising out during the course of the year could be for all the vacancies that may arise for any reason, during the course of year. (Paras 27 to 29 & 32)

क. सेवा विधि - लोक सेवा (पदोन्नति) नियम, म.प्र. 2002, नियम 7(4) - वर्ष के दौरान पदोन्नति के लिए रिक्तियों की संख्या, विद्यमान और सेवानिवृत्ति तथा उच्च पद पर पदोन्नति के कारण प्रत्याशित रिक्तियों/सेवा के भाग/पदों का उच्च वेतनमान, एक वर्ष से अधिक समय के लिए प्रतिनियुक्ति के फलस्वरूप उत्पन्न रिक्तियों को हिसाब में लेकर की जाएगी - आशय यह है कि जब नियम वर्ष के दौरान उत्पन्न रिक्तियों के बारे में कहता है तो उन सभी रिक्तियों के लिए होगा जो वर्ष के दौरान किसी भी कारण से उत्पन्न हुई हों।

B. Service Law - Promotion - Non-availability of confidential reports of previous year, availability of anticipated vacancies, objection of employee's union, recommendation of Minister for postponement of DPC ignored by DPC - Department acted in a very unreasonable, unjust and arbitrary manner in promotion - Held - The Government was justified in ordering review DPC. (Paras 35 to 38)

ख. सेवा विधि - पदोन्नति - डी.पी.सी. द्वारा पूर्ववर्ती वर्ष के गोपनीय प्रतिवेदनों की अनुपलब्धता, प्रत्याशित रिक्तियों की उपलब्धता, कर्मचारी संघ की आपत्ति, डी.पी.सी. के स्थगन के लिए मंत्री की अनुशंसा की उपेक्षा की गयी - विभाग ने पदोन्नति में बिलकुल अयुक्तियुक्त, अन्यायपूर्ण और मनमाने ढंग से कार्य किया - अभिनिर्धारित - सरकार का डी.पी.सी. पुनर्विलोकन आदेश न्यायोचित।

Cases referred :

2003 AIR SCW 1424, (2003) 6 SCC 535, (1991) 2 SCC 295, (1997) 3 SCC 59, (1987) 1 SCC 424, AIR 1979 SC 1803, AIR 1977 SC 968, AIR 1965 SC 951, AIR 1977 SC 2328, AIR 1979 SC 1029, AIR 1992 SC 1, AIR 1959 SC 198, (1979) 1 SCC 308, (1986) 2 SCC 237, (1949) 2 All ER 155, 164, (1972) 1 All ER 1057, 1076, 1077, (1981) 4 SCC 173, (1981) 4 SCC 82, (1981) 1 SCC 449, 1956 SCR 577, (1976) 1 SCR 451, (1984) 2 SCC 50.

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Manoj Sharma, for the petitioner.

Samdarshi Tiwari, G.A., for the State.

K.S. Wadhwa, for the PSC.

A.P. Singh, for the respondent Nos.4 & 6.

ORDER

RAJENDRA MENON, J. :—As common questions involved in these three petitions are with regard to promotion from the post of Dy. Commissioner to the post of Additional Commissioner (Commercial Tax), on the basis of a meeting of the Departmental Promotion Committee, held on 19.5.2006, all these petitions were heard analogously and are being decided by this common order.

2. For the sake of convenience, documents available in the records of Writ Petition No.14737/2008(S) and certain documents available in the records of Writ Petition No.4011/2007(S) are being referred to. Apart from this, the original file with regard to creation of post and certain decision taken by the Government in the matter of the said promotion process is also considered.

3. All the persons interested in the lis, namely the petitioners and the private respondents, are holding the post of Dy. Commissioner in the Commercial Tax Department. Even though their dates of appointment are different, but the question involved in these petitions pertains to their claim for promotion on the post of Assistant Commissioner, Commercial Tax Department. In that view of the matter and further in view of the fact that there is no dispute with regard to the service particulars of the employees involved in this petition, the particulars are not being separately referred to.

4. The terms and conditions of employment in the Department are governed by the Rules framed under Article 309 of the Constitution of India and the relevant rules are the Madhya Pradesh Sales Tax Class I and II Service Recruitment Rules, 1966 (hereinafter referred to as the Recruitment Rules) and, the Madhya Pradesh Public Services (Promotion) Rules, 2002 (hereinafter referred to as the Promotion Rules). It is not in dispute that promotion from the post of Dy. Commissioner to Additional Commissioner is based on the criteria of merit-cum-seniority and the method of determining the zone of consideration is contemplated in the Promotion Rules. It is also an admitted position that all the persons namely, the petitioners and the private respondents, fulfil all the criteria laid down in the Recruitment Rules, i.e., the eligible criteria. However, the only dispute is with regard to the zone of consideration.

5. Procedure for determining the basis for promotion, the procedure to be followed for determining the zone of consideration, the procedure to be followed for reservations to the post are all contained in the Promotion Rules and for the purposes of the present case, Rule 7 contemplates the provision on the basis of which the promotion is to be made.

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6. Sub-rule (1) of Rule 7, of the Promotion Rules, contemplates that when promotions are to be made on the basis of merit-cum-seniority, the zone of consideration has to be determined in accordance to the table appended in sub-rule (1). According to the sub-rule, if the number of vacancy to be filled up in the year is one, then the number of persons to be considered for promotion is five. Similarly, if there are two vacancies in an year, the number of persons to be considered are eight; likewise in case of their being four vacancies the number of persons to be considered are twelve; and, in case of their being six vacancies the number of persons to be considered is sixteen.

7. Sub-rule (3) of Rule 7 contemplates that name of only such public servants shall be considered for promotion, who have completed the requisite number of years of service in the feeder cadre as per the Recruitment Rules and who fall within the zone of consideration. That apart, this rule provides for creating of a waiting list and it contemplates that in the select list prepared after the promotion exercise, names of two public servants or 25% of the number of public servants, included in the select list, which ever is more shall be included to fill up unforeseen vacancies occurring during the course of the aforesaid period.

8. Thereafter, sub-rule (4), which is very crucial for decision in this writ petition, reads as under:

“(4) The number of vacancies for promotion during the course of the year i.e., from 1st January to 31st December shall be worked out after taking into account the existing and anticipated vacancies on account of retirement and promotions to higher cadres/part of service/higher pay scale of posts. Vacancies arising out of deputation for periods exceeding one year shall also be taken into consideration. The number of vacancies to be reserved for public servants belonging to Scheduled Castes and Scheduled Tribes shall be worked out on the basis of the roster which is required to be maintained in accordance with the provisions of Rule 9 of these rules.”
(Emphasis supplied)

9. In pursuance to the aforesaid Recruitment Rules and Promotion Rules, four vacancies were determined in the year 2006 as existing in the cadre of Additional Commissioner. Out of the four vacancies, two were in the unreserved general category; one was reserved for scheduled caste candidate; and, one for scheduled tribe candidate. In accordance to the provisions of sub-rule (1) of Rule 5 of the Promotion Rules, for the four vacancies, the number of candidates who came within the zone of consideration was determined as 12. Accordingly, the DPC was convened on 19.5.2006 and the case of the 12 person as per the seniority list was taken into consideration. The proceedings of the DPC held on 19.5.2006 is filed as Annexure P/2. The DPC considered the case of 12 persons as per seniority

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and in paragraph 13 of the proceedings, gave its recommendations for promotion. Shri G.S. Baghel and Shri A. K. Naik were recommended for promotion in the unreserved general category; and, Shri N.L. Padwar was recommended in the scheduled caste category. A waiting list was also prepared in which Shri S.L. Verma and Smt. Santosh Maheshwari, petitioners in Writ Petition No.14737/2008(S), were empanelled at Serial Nos. 1 and 2. Immediately after the recommendations were made by the aforesaid DPC, rather even before the recommendations were made, it is seen that Shri Ashok Kumar Shukla, petitioner in Writ Petition No.4011/2007(S), and certain Employees' Union were objecting to the holding of the DPC on 19.5.2006, and they had sought for postponement of the DPC's meeting mainly on two grounds: the first ground was that as the confidential reports for the entire period i.e. the preceding five years, are not available, the DPC be held after the confidential report for the entire period are made available. It was further pointed out that due to introduction of the new Value Added Tax System, which is being enforced in the State of Madhya Pradesh with effect from 1.4.2006, two additional posts of Additional Commissioner and 12 additional posts of Dy. Commissioner are being created and as the process of creating these two additional posts are under way, the DPC be held after the two posts are created so that other eligible candidates may also come within the zone of consideration.

10. Shri Ashok Kumar Shukla, petitioner in Writ Petition No.4011/2007(S), submitted that in such case he would also come within the zone of consideration. However, as the request made by Shri Ashok Kumar Shukla and the Employee's Union were not considered and the DPC considered the case and submitted its report, Shri Shukla filed Writ Petition No.4011/2007(S), challenging the proceedings of the DPC, sought for its cancellation and holding of a review DPC. When this petition was pending, it seems that orders were passed vide Annexures P/12, P/13 and P/14, available in the records of Writ Petition No.4011/2007(S), promoting Shri G.S. Baghel, Shri A.K. Naik, Shri N.L. Padwar, Shri S.L. Verma and others as Additional Commissioners. Accordingly, Shri Ashok Kumar Shukla amended his writ petition and challenged the promotion of respondents 3 to 7, in his petition on the post of Additional Commissioner.

11. While the said writ petition was pending and the question was sub judice, State Government issued an order on 11.4.2008 – Annexure P/13, in Writ Petition No.14737/2008(S) and by this order informed the Secretary, Public Service Commission, Indore that as two additional posts have been created, a review DPC of the original DPC held on 19.5.2006 be conducted and after taking note of the total six existing vacancies, persons coming within the zone of consideration be included in the list for consideration and the review DPC held. Challenging this order-dated 11.4.08, Writ Petition No.14737/2008(S) is filed by petitioners Shrawanlal Verma and Smt. Santosh Maheshwari, who are kept in waiting list

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Nos. 1 and 2, as per the recommendations of the DPC held on 19.5.06, and they claim promotion on the two additionally created posts by virtue of inclusion of their name in the waiting list.

12. Petitioner Ramesh Chandra Paliwal, in Writ Petition No.14742/2008, had filed the petition also challenging the same order-dated 11.4.08 and sought for proceeding in the matter in accordance to the recommendations of the DPC held on 19.5.2006.

13. Accordingly, the three petitions have been filed claiming the respective reliefs, as indicated hereinabove.

14. Even though in Writ Petition No.4011/2007(S) i.e... in the case of Shri Ashok Kumar Shukla, State Government has filed an application for dismissing the said writ petition, as having been rendered infructuous due to prayer of Shri Shukla being allowed, as a review DPC is being ordered, but as Shri Ashok Kumar Shukla is respondent in Writ Petition Nos.14737/08(S) and 14742/08(S), and as petitioners in these two cases are challenging the order passed by the State Government on 11.4.08, instead of dismissing Writ Petition No.4011/07(S), as having been rendered infructuous, it is thought appropriate to decide it alongwith the other two petitions as the decision in these two petitions would also have some bearing on the prayer made by Shri Ashok Kumar Shukla, in the event of the prayer made by petitioners in Writ Petition Nos.14737/08(S) and 14742/08(S), being allowed.

15. Shri K.K. Trivedi, learned counsel representing petitioners in Writ Petition Nos.14737/08(S) and 14742/08(S), referred to sub-rule (3) and sub-rule (4) of Rule 7, of the Promotion Rules and argued that as the DPC held on 19.5.06 is strictly in accordance to the Promotion Rules, the action of the State Government in directing for a review DPC is unsustainable. Referring to sub-rule (4) of Rule 7, Shri K.K. Trivedi emphasized that this Rule provides for taking into account the vacancies that were existing in the course of the year, when the promotion is to be made i.e.. from 1st January to 31st December, so also the 'anticipated vacancies' that may arise on account of retirement of employees, promotion to higher cadre or post and vacancies arising out of deputation for period exceeding one year, in the year. Shri Trivedi emphasized that when the DPC's meeting was held on 19.5.06, the existing vacancies were only four and as the two vacancies that were created after 19.5.06 do not fall in the category of 'anticipated vacancies', as contemplated under sub rule (4), there is no question for holding a review DPC or postponing the DPC that was to meet on 19.5.06. Referring to the aforesaid rule, Shri Trivedi emphasized that the 'anticipated vacancies' referred to in the Rule should arise out of retirement or promotion to the higher post or due to deputation of some employees. The Rule does not contemplate consideration of vacancies that may arise on any other account as 'anticipated vacancies' and, therefore, the two additional posts created after the DPC met on 19.5.06 due to

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introduction of the VAT system in the State of MP will not come within the purview of 'anticipated vacancies', as contemplated under sub-rule (4) and under such circumstances decision of the State Government in treating the two vacancies that were created to be 'anticipated vacancies' and consequently ordering for a review DPC is contrary to the requirement of the Rule. It was further emphasized by him that under sub-rule (3) waiting list is prepared for filling up unforeseen vacancies and the two vacancies that arose after the DPC met on 19.5.06 would fall within the category of unforeseen vacancy and the same would rightly go to the persons, who are in the waiting list i.e... petitioners Shравanlal Verma and Smt. Santosh Maheshwari, in Writ Petition No.14737/08(S). Accordingly, applying strict interpretation to the Rules, Shri K.K. Trivedi, learned counsel appearing for the petitioners, supported the DPC, which was held on 19.5.06, argued that the said DPC was rightly held and the decision of the State Government to hold a review DPC is contrary to the Statutory Rules and, therefore, unsustainable. On the aforesaid ground, Shri K.K. Trivedi argued that the Rule having been strictly followed in the matter of conducting the DPC, the State Government committed error in allowing the representation of Shri Ashok Kumar Shukla, which was not warranted. Accordingly, on the aforesaid grounds, he seeks for interference.

16. Shri Samdarshi Tiwari, learned Government Advocate, submitted that after the DPC's meeting was held on 19.5.06 and when Shri Ashok Kumar Shukla and certain Employee's Union had raised objections, the matter was referred to the General Administration Department of the State Government and on examination of the entire matter, based on the factual scenario, it transpired that due to the proposed enforcement of the VAT system, which was to come into force in the State from 1.4.06, the Commissioner, Commercial Tax Department on 28.2.2006 submitted a note-sheet Bearing No.697/2006/1, and submitted a report pointing out that as the new system of tax i.e... VAT system is to be enforced from 1.4.06, certain additional posts are required to be sanctioned to meet the requirements of the changed system. It was pointed out that Commissioner by his proposal dated 28.2.06 had requested for various posts in the cadre of Additional Commissioner, Dy. Commissioner, Assistant Commissioner, Commercial Tax Officer, Assistant Commercial Tax Officer and Commercial Tax Inspector. The proposal of the Commissioner was received by the Principal Secretary to the Department of Commercial Tax on 1.3.06 and after working out the entire requirement on 21.4.06, it was decided that due to introduction of the new system, two additional posts of Additional Commissioner and 12 posts of Dy. Commissioner be sanctioned and, therefore, on 21.4.06, the matter was proposed to be referred to the Finance Department for its concurrence. The Finance Department after concurrence of its Minister gave approval on 22.5.06 and finally the State Government approved creation of the additional posts on 20.6.06. Accordingly, Shri Samdarshi Tiwari argues that when the DPC's meeting was held on 19.5.06, even prior to that it

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was anticipated that two additional posts would be created. That apart, as confidential report of most of the Dy. Commissioners were not available, Minister concerned in the Department, proposed for postponement of the DPC to be held on 19.5.06, so that DPC may be held after the CR folders of all the incumbents to be considered, are received. It is pointed out by Shri Samdarshi Tiwari that, two meetings of the DPC were proposed. One was for considering the case of Dy. Commissioners for promotion to the post of Additional Commissioners and the other was for promotion to the post of Dy. Commissioners. In the case of promotion to the post of Dy. Commissioners also the same position was existing, therefore, the DPC to be held for promotion on the post of Dy. Commissioners were postponed and the DPC was held only on 29.12.06, after including the 12 newly created posts. However, in the case of promotion to the post of Additional Commissioner, the DPC was not postponed, it was held and when the matter was re-examined by the GAD, it was opined that as the vacancies were already anticipated and were in the pipeline and as addition of two posts would enlarge the zone of consideration, entitling other eligible candidates to be considered, that apart as the CR's of all the eligible candidate were not available review DPC should be held and as the State Government accepted the recommendations of the GAD, which was found to be reasonable and fair, in the interest of all concerned, it is argued by him that the action of the Government does not warrant any interference.

17. Shri Manoj Sharma, learned counsel appearing for Shri Ashok Kumar Shukla, petitioner in Writ Petition No.4011/2007(S), submitted a two-fold submission:

(i) His first argument was that strict interpretation theory as canvassed by Shri K.K. Trivedi is not correct. It was emphasized by him that the implication of the words 'anticipated vacancies' used in sub-rule (4) of Rule 7, of the Promotion Rules, has to be liberally construed to mean all vacancies, which could arise in the course of the year i.e... between 1st January to 31st December, when the promotion exercise was to be held.

It was submitted by him that the exigency contemplated in the Rule i.e... on account of retirement, promotion to higher post and deputation are the situations due to which vacancies may arise, but the intention of the rule-maker in using the words 'anticipated vacancies' should not be given a restricted meaning with relation to the eventualities contemplated in the Rules, but should be used in a broader sense to mean the 'vacancies', that may also arise during the year. It was argued by him that when the rule speaks about 'anticipated vacancies' arising in the year, it would mean all 'anticipated vacancies' that may arise in the course of the year for any cause, in addition to the eventualities contemplated in the Rule. He wanted this Court to interpret the Rule in such a manner that it is in furtherance to the intention of the rule-maker and not to give a restrictive meaning to the Rule.

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(ii) The second limb of submission made by Shri Manoj Sharma was to the effect that even if the interpretation canvassed by Shri K.K. Trivedi is accepted, in that case also if it is found that the departmental authorities proceeded with the DPC on 19.5.06, with an intention to give undue benefit to certain class of persons and by ignoring justifiable reasons present for postponement of the DPC, still proceeding with the matter in the manner done, it was not proper and the same would amount to an action, which can be termed as malafide, legal in nature, is unjustified and arbitrary and, therefore, should be interfered with.

Taking me through some of the material available on record, Shri Manoj Sharma tried to emphasize that the haste and hurry shown by the department and its authorities for proceeding with the DPC on 19.5.06, and the manner in which they acted, should be taken note of and an inference drawn to hold that this action was wholly unjustified and arbitrary. Shri Manoj Sharma submitted that when the proposal was made for holding the DPC on 19.5.06, apart from Shri Ashok Kumar Shukla, the Employee's Union had also represented to the State Government and sought for postponement of the DPC. It is pointed out by him by referring to Annexure P/6, available in the records of Writ Petition No.4011/2007(S), that confidential reports of the previous five years were to be considered, the previous five years starts from 2001 and ends in the year 2005. The availability of confidential report as indicated in Annexure P/6 shows that confidential report of none of the employees for the year 2005 were available, confidential reports of the year 2004 were available in the case of one employee only. Considering this and taking note of the representation of the Employee's Union and others, the Minister in the Department concerned had requested for postponement of the DPC to be held on 19.5.06, but the Additional Secretary in the Department by his note-sheet – Annexure P/8 on 18.5.06, reported that it is not necessary to postpone the DPC due to non-availability of confidential reports, the Rules provide for certain methods of consideration even on such eventualities, and the representation and other objections of the Union can be placed for consideration before the DPC. Accordingly, the DPC proceeded with the meeting, but in the meeting did not bother to take note of the objection and representation of the petitioner and Employee's Union, which were proposed to be placed before the DPC, as indicated in Annexure P/8. Shri Manoj Sharma emphasized that inspite of indications made in the note-sheet – Annexure P/8, the objections and other material was not placed before the DPC for consideration. That apart, Shri Manoj Sharma points out that on the same consideration the DPC's meeting, in the case of promotion to the post of Dy. Commissioners, were postponed, but in the case of promotion to the post of Additional Commissioners, without any justification a different yardstick was adopted, which indicates the interest of some of the officers in proceeding

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with the DPC in an arbitrary manner. Apart from the aforesaid, referring to the proceedings of the DPC and the Members who participated in the DPC, Shri Manoj Sharma emphasized that the DPC consisted of three Members namely; Shri N.C. Nagraj, Chairman of the M.P.P.S.C; Shri J.P. Singhal, Principal Secretary in the Department of Commercial Tax; and, Shri P.K. Das, Commissioner, Commercial Tax, Indore. It was argued by him that when the DPC met on 19.5.06, Shri J.P. Singhal, the Principal Secretary, and Shri P.K. Das, Commissioner, were aware of the fact that due to introduction of the VAT system, two additional posts are being created and even before the date of the DPC i.e., 19.5.06, a decision has been taken and the matter was pending before the Finance Ministry and it was likely to grant sanction very shortly and infact approval of the Finance Ministry was obtained on 22.5.06. Referring to the note-sheets processed from 28.2.06 onwards, Shri Manoj Sharma emphasized that it was Shri P.K. Das, the Commissioner, who had initiated the proposal for increase of the additional posts on 28.2.06 and it was approved by Shri J.P. Singhal on 1.3.06. Inspite of the fact that they were in know-how of the pendency of the matter with regard to creation of two additional posts, they proceeded with the DPC instead of adjourning it. It was argued by him that when in the case of Dy. Commissioners, the DPC could be adjourned on similar consideration, there was no reason for proceeding with the DPC only in the case of Additional Commissioners, when similar situation was prevailing in this case also. This according to Shri Manoj Sharma was an arbitrary and unjustified action on the part of the departmental authorities and, therefore, on this count alone the action of the State Government, based on the recommendations of the GAD to hold a review DPC, which is a just, fair and reasonable decision, the same does not warrant any interference.

18. In support of his contention, Shri Manoj Sharma placed reliance on the following judgments: *Shyama Charan Dash Vs. State of Orissa*, 2003 AIR SCW 1424; *Dwarka Prasad and others Vs. Union of India and others*, 2003(6) SCC 535; *Director, Lift Irrigation Corporation Limited Vs. Pravatkiran Mohanty*, 1991 (2) SCC 295; and, *Dr. Ramulu and Another Vs. Dr. S. Suryaprakash Rao and others*, 1997(3) SCC 59. It was emphasized by him by relying on the aforesaid judgment, particularly in the case of *Shri S.C. Das* (supra), to argue that mere inclusion of the name of certain persons in the select list does not confer on them any right to be promoted and as petitioners have a right, legally enforceable, atleast for the purpose of being considered for promotion, if this right, which is being enforced by the State Government, then, the same does not warrant any interference. Accordingly, he prays for rejection of the prayer made by Shri K.K. Trivedi.

19. Learned counsel appearing for the interveners are mainly those persons, who are adversely affected because of the stay granted by this Court and due to which DPC's not only for the year 2006 i.e., the Review DPC, but the subsequent

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DPC's for the year 2007-08 have not been held and even further promotion to the post of Dy. Commissioners are being held up. They have, therefore, filed applications for interventions mainly for vacation of the stay and direct for considering the respective DPC's. Some of the interveners are supporting the case of Shri Ashok Kumar Shukla and want the action of the State Government in holding the review DPC to be upheld.

20. Having heard learned counsel for the parties at length and on consideration of the facts and circumstances of the case, I am of the considered view that two moot questions arise for consideration in these writ petitions:

- (a) The first question would be as to whether the strict interpretation of the Rule, particularly sub-rule (4) of Rule 7, as canvassed by Shri K.K. Trivedi should be accepted or the liberal interpretation theory advanced by Shri Manoj Sharma should be followed.

Consequently, this Court will have to consider as to whether the rule has to be interpreted in a manner so as to be in furtherance to the intention of the rule-maker, if so, as to what could be the said intention.

- (b) The next question would be, irrespective of the answer to the first question, whether the action of the departmental authorities in proceeding with the DPC on 19.5.96 was an arbitrary and unjustified action and, therefore, the decision of the State Government based on the recommendations of the GAD is a just, fair and reasonable decision in furtherance to the interest of justice to all concerned.

21. As far as the first question is concerned, the Rules in question i.e... the Promotion Rules as indicated hereinabove has to be taken note of, and it is required to be evaluated as to what was the intention of the Legislature in using the words 'anticipated vacancies' in sub-rule (4). A complete reading of the Rules would indicate that all 'existing' and 'anticipated vacancies' falling between the period from 1st January to 31st December, of a year, had to be worked out and taken into account for consideration in the promotion exercise as only one promotion exercise is conducted in a year. As far as working out existing vacancies are concerned, there is no dispute and the existing vacancies would be ones, which have already come into existence i.e.. four in the present case. The dispute is with regard to 'anticipated vacancies' that could arise between the period 1st January to 31st December, 2006. Shri K.K. Trivedi wanted this Court to interpret 'anticipated vacancies' to mean those which could arise during the period should arise on account of retirement, promotion to higher post or due to deputation of

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some employees. Vacancies arising due to any other reason is not permissible to be counted as 'anticipated vacancies', under the Rules. Accordingly, by referring to sub-rule (3), Shri K.K. Trivedi, learned counsel, wants this Court to hold that the vacancies two in number that arose after the DPC met on 19.5.06 are the unforeseen vacancy, which went to the petitioners in Writ Petition Nos.14737/08(S) and 14742/08(S).

22. At this juncture, it would be appropriate to take note of certain legal principles that are to be followed while interpreting statutory provisions. The basic principles with regard to interpretation of statutes and the principles for taking note of, the intention of the legislature, principle of considering a statute in a manner to make it more effective and workable and the principle of reading a statute in accordance to the language employed therein, has been discussed in detail by Hon'ble Shri Justice G.P. Singh in his book – 'Principles of Statutory Interpretation, 11th Edition. The learned author in the said book, in Chapter pertaining to determining the intention of the Legislature, has referred to certain observations made by Justice Chinappa Reddy, in the case of *Reserve Bank of India Vs. Pearless General Finance and Investment Co.*, 1987 (1) SCC 424, certain principles canvassed by Justice Holmes and Hon'ble Blackstone, and has dealt with the matter in the following manner:

"In the words of Chinappa Reddy, J: 'Interpretation must depend on the text and context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it is enacted'. The principle as stated by Mr. JUSTICE HOLMES is to the following effect: 'You construe a particular clause or expression by construing the whole instrument and any dominant purposes that it may express. In fact, intention is a residuary clause intended to gather up whatever other aids there may be to interpretation besides the particular words and the dictionary'.

According to BLACKSTONE the most fair and rational method for interpreting a statute is by exploring the intention of the Legislature through the most natural and probable signs which are 'either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law."

Thereafter, the learned author has explained the manner of exploring 'intention of the Legislature' and the explanation to the same given by Lord Watson, who terms it as a 'slippery phrase', and it is so quoted by the author:

" In a court of law or equity, what the Legislature intended to be

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done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication'. But the whole of what is enacted 'by reasonable and necessary implication' can hardly be determined without keeping in mind the purpose or object of the statute. This formulation therefore does not in effect reject the concept of 'purpose' but contains the same within the import of the phrase 'necessary implication'."

23. After taking note of the judgment of the Supreme Court, in the case of *Organo Chemical Industries Vs. Union of India*, AIR 1979 SC 1803, it has been observed by learned author that the Supreme Court has held that a bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficial legislation to futility. Thereafter, certain observations made by Hon'ble Justice K. Iyer, J, in the case of *Chairman, Board of Mining Examination and Chief Inspector of Mines Vs. Ramjee*, AIR 1977 SC 968, is quoted which reads as under:

"..... to be literal in meaning is to see the skin and miss the soul. The judicial key to construction is the composite perception of the deha and the dehi of the provision."

Thereafter, the learned author has referred to various judgments of the Supreme Court and the High Court and finally it is observed that the correct interpretation is one that harmonizes the words in a way that it is in furtherance to the intention of the Legislature. Learned author says after referring to various principles laid down not only by Indian Court, but also by English Courts, that Courts should strongly lean against constructions, which would reduce a statutory provision to a futility. It has been so observed by the learned author in the said book:

"The Courts will therefore reject that construction which will defeat the plain intention of the Legislature even though there may be some inexactitude in the language used (*Dy. Custodian Vs. Official Receiver*, AIR 1965 SC 951, pp. 956, 957). 'If the Choice is between two interpretations', stated VISCOUNT SIMON, L.C., 'the narrower of which would fail to achieve the manifest purpose of the legislation we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result' – *Union of India Vs. Sankalchand*, AIR 1977 SC 2328, p.2381; Superintendent and Remembrancer *LAWB vs. Abani Maity*, AIR 1979 SC 1029, p.1033; *Mohan Kumar Singhania Vs. Union of India*, AIR 1992 SC 1, p. 19."

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Finally, Hon'ble Justice G.P. Singh has referred to a judgment of the Supreme Court, in the case of the Supreme Court in the case of *Siraj-ul-Haq Vs. Sunni Central Board of Waqf, UP* - AIR 1959 SC 198, and after taking note of certain observations made and principles laid down by GAJENDRA GADKAR, J, has reproduced the same in the following manner:

"It is well settled that in construing the provisions of a statute courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective' and, 'where literal meaning of the words used in a statutory provision would manifestly defeat its object by making a part of it meaningless and ineffective, it is legitimate and even necessary to adopt the rule of liberal construction so as to give meaning to all parts of the provision and to make the whole of it effective and operative."

24. The principle of interpretation of statutory provisions and advancing the intention of the Legislature is further considered by the Supreme Court in the case of *V.C. Rangadurai Vs. D. Gopalan and others*, (1979) 1 SCC 308. In the said case certain eventualities which may arise on a subsequent point of time, incapable of apprehension by the Legislature and meeting new and unforeseen needs while considering such statutes, are taken note of and in paragraph 11 of the said judgment, the following principles are laid down:

"11. Wide as the power may be, the order must be germane to the Act and its purposes, and latitude cannot transcend those limits. Judicial 'Legisputation' to borrow a telling phrase of J. Cohen, [Dickerson: The Interpretation and Application of Statutes, P.238] is not legislation but application of a given legislation to new or unforeseen needs and situations broadly falling within the statutory provision. In that sense, 'interpretation is inescapably a kind of legislation'. This is not legislation stricto sensu but application, and is within the court's province."

25. Again, in the case of *M/s Girdhari Lal and sons Vs. Balbir Nath Mathur and others*, (1986) 2 SCC 237, the principle of construing the enactment keeping in view the legislative intent and the principles to be followed for ascertaining the said intention so also the general principle of giving effect to plain meaning of a Rule and departure from that Rule and enforcing a construction to advance the object and purpose of enactment is considered. It is held in the aforesaid case by the Supreme Court that ascertainment of legislative intent is the basic rule of statutory construction, it is held that such a construction should be preferred, which advances the legislative intent. It is held in the aforesaid case that even though a construction in accordance to the plain language of the statute should be adopted, but if such a construction leads to anomalies, injustice or absurdity then deviation

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can be permitted and the Rule of statutory provision can be interpreted in such a manner that it advances the cause of justice. In the said case it has been held that when a particular provision is enacted, the draftsman may design his words to meet certain 'primary situations'. These are the situations that may be existing while enacting a particular provision, but while interpreting the said provision after certain point of time it may be necessary for the Court to impute intention to the draftsman or legislature with regard to certain 'secondary situation', which may arise subsequently and by doing so it is held that the Court may interpret the provision by taking note of the subsequent developments classified as 'secondary situation' and thereafter advance the cause of justice. For the sake of convenience, the principles in this regard laid down by the Hon'ble Supreme Court after referring to the principles laid down in certain English case, are reproduced hereinbelow:-

"6. Even where the words of statutes appear to be prima facie clear and unambiguous it may sometimes be possible that the plain meaning of the words does not convey and may even defeat the intention of the legislature; in such cases there, is no reason why the true intention of the legislature, if it can be determined, clearly by other means, should not be given effect. Words are meant to serve and not to govern and we are not to add the tyranny of words to the other tyrannies of the world.

8. Once parliamentary intention is ascertained and the object and purpose of the legislation is known, it then becomes the duty of the court to give the statute a purposeful or a functional interpretation. This is what is meant when, for example, it is said that measures aimed at social amelioration should receive liberal or beneficent construction. Again, the words of a statute may not be designed to meet the several un contemplated forensic situations that may arise. The draftsman may have designed his words to meet what Lord Simon of Glaisdale calls the "primary situation". It will then become necessary for the court to impute an intention to Parliament in regard to "secondary situations". Such "secondary intention" may be imputed in relation to a secondary situation so as to best serve the same purpose as the primary statutory intention does in relation to a primary situation.

9. ... For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and

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purpose of the enactment by supplementing the written word if necessary.

12. In *Seaford Court Estates Ltd. v. Asher*, (1949) 2 All ER 155, 164, Lord Denning, who referred to Plowden's Reports already mentioned by us said:

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity.. [A] judge, cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a construction of the social conditions which gave rise to it and of the mischief which it was passed to remedy and *then he must supplement the written words* so as to give 'force and life' to the intention of the legislature...Put into homely metaphor it is this: A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge should not alter the material of which the Act is woven, but he can and should iron out the creases.

13. In *Rugby Joint Water Board v. Footitt*, (1972) 1 All ER 1057, 1076, 1077, Lord Simon of Glaisdale said:

"The task of the courts is to ascertain what was the intention of Parliament, actual or to be imputed, in relation to the facts as found by the court... On scrutiny of a statutory provision, it will generally appear that a given situation was within the direct contemplation of the draftsman as the situation calling for statutory regulation: this may be called 'the primary situation'. As to this, Parliament will certainly have manifested an intention — 'the primary statutory intention'. But situations other than the primary situation may present themselves for judicial decision — secondary situations. As regards these secondary situations, it may seem likely in some cases that the draftsman had them in contemplation; in others not. Where it seems likely that a secondary situation was not within the draftsman's contemplation, it will be necessary for the court to impute an intention to Parliament in the way I have described, that is, to determine what would have been the statutory intention if the secondary situation had been within parliamentary contemplation (a secondary intention)."

(Emphasis supplied)

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And, finally in paragraph 16, it is so held:

16. Our own court has generally taken the view that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities, vide *K.P. Varghese v. ITO*, (1981) 4 SCC 173; *State Bank of Travancore v. Mohd. M. Khan*, (1981) 4 SCC 82; *Som Prakash Rekhi v. Union of India*, (1981) 1 SCC 449; *Ravula Subba Rao v. CIT*, 1956 SCR 577; *Govindlal v. Agricultural Produce Market Committee*, (1976) 1 SCR 451; and, *Babaji Kondaji v. Nasik Merchants Coop. Bank Ltd*, (1984) 2 SCC 50.”

26. The aforesaid principle is to be followed by this Court while interpreting sub-rule (4) read with sub-rule (3) of Rule 7. That being so, if the intention of the rule maker in using the words ‘existing’ and ‘anticipated vacancies’ are taken note of, then meaning of these words have to be determined with reference to the purpose for which the rule is enacted and the requirement, which was paramount in the mind of the rule maker, while using the words in the manner done in the rule.

27. Rule 7, as already indicated hereinabove, pertains to procedure to be followed for promotion on the basis of merit-cum-seniority. As the best meritorious persons are required to be selected for the service, a particular zone of consideration is prescribed and which is determined in accordance to the requirement of sub-rule (1). A bare reading of sub-rule (4) would indicate that promotion exercise is undertaken for the purpose of filling up all the vacancies that may arise during the course of the year and the year as per rule starts from 1st January and ends on 31st December. The Rule contemplates that all the vacancies that would arise during this period should be worked out after taking into account the ‘existing’ and ‘anticipated vacancies’ and thereafter the promotion exercise conducted as per the Recruitment and Promotion Rules. The promotion exercise is conducted once in a year to fill up all the existing and anticipated vacancies. In determining the ‘existing vacancies’, there is no difficulty. However, the ‘anticipated vacancies’ are to be worked out after foreseeing certain eventualities. These eventualities which may have consequential effect of creating vacancies are retirement of some employees, promotion of some employees to the higher post and deputation of some employees out of the department. These are some of the eventualities that can be foreseen and crystallized as those that may arise giving birth to certain vacancies. Apart from the eventualities contemplated in the rules, there may arise some peculiar situations, which may also result in certain vacancies coming up

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during the course of the year. These would also fall within the meaning of 'anticipated vacancies'. However, the question would be as to whether these vacancies, which do not fall within the contingencies stipulated in the rule can be included in the category, as indicated in the rule.

28. The intention of the legislature is to ensure that all the vacancies that may arise in the course of the year, between 1st January to 31st December, should be worked out and the promotion exercise conducted for the purpose of filling up all these vacancies. When the Rule was being drafted, it would not have been possible for the rule maker to foresee all the situations that may arise during the course of the year due to which vacancies may be created. Some of the situations that were anticipated by the rule maker like retirement, promotion, deputation etc were incorporated in the Rules. There may be certain situation like the one existing in the present case, which could not be foreseen by the rule maker, but when the ruler maker wanted to see that that promotion exercise is conducted for the vacancies arising during the year, they would ultimately have thought of filling up all the vacancies that could arise in the year by the same exercise. It is, therefore, clear that even though the rule in question speaks about 'anticipated vacancies' arising due to retirement, promotion, deputation etc, the intention of the rule maker could not be and should not have been to restrict the vacancies arising only to these eventualities. The intention when the rule speaks about vacancies arising out during the course of the year could be for all the vacancies that may arise for any reason, during the course of the year. Merely because the 'anticipated vacancies' arose in the context of a different situation, which was not foreseen, that does not mean that it will not fall in the category of 'anticipated vacancies'. This is also the principle laid down in the case of *Girdhari Lal* (supra).

29. When a service rule providing for certain benefit to the employees are formulated, interpretation of the rule has to be done in a manner so as to grant benefit to maximum number of employees. Merely because the 'anticipated vacancies' that may arise during the course of the year in the Rule refers to certain contingencies indicated therein, it cannot be held that the rule maker wanted to rule out all other contingencies or eventualities. If that was the intention, then the words used in the Rule could have been more stringent and specific to show that apart from the contingencies stipulated therein, no other contingency can be taken note of. There is nothing in the Rule to suggest that the rule maker wanted to restrict the contingencies to the one stipulated therein. Infact the words used are 'anticipated vacancies on account of'. If the words 'only on account of' or some other restrictive words were used, the interpretation of Shri K.K. Trivedi could have been accepted. But, the words used in the Rule are not so stringent to suggest that the Legislature wanted restriction of the Rule only to the eventualities contemplated therein and not to anything more. It seems to be a case where certain 'anticipated eventualities' are indicated in the Rule and certain eventualities,

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which could not be foreseen were not indicated, but if during the course of the year certain vacancies were anticipated which could not be thought of by the rule maker, when the rule was framed, a beneficial rule, which is for the benefit of the employee, has to be interpreted in such a manner that maximum number of employees can get benefit of the rule. It is, therefore, a case where the liberal interpretation theory canvassed by Shri Manoj Sharma should be accepted and the restrictive meaning by strict interpretation canvassed by Shri K.K. Trivedi cannot be accepted. This Court is of the considered view that the Rule was formulated for filling up of the vacancies that could arise during the course of the year and merely because the Legislature has referred to certain specific contingencies like retirement, promotion and deputation, it does not mean that other eventualities which may give rise to vacancies in the course of the year cannot be included in the Rule, as 'anticipated vacancies'.

30. Accordingly, the interpretation canvassed by Shri K.K. Trivedi with regard to sub-rule (4) cannot be accepted, as the same does not fall in the line with the settled principles and the followed in the matter of interpreting such a Rule.

31. That apart, the interpretation given to the words 'unforeseen vacancies' in sub-rule (3) canvassed by Shri K.K. Trivedi cannot be accepted. 'Unforeseen' would mean something, which could not be anticipated or thought of at a relevant point of time. In the present case, petitioners in Writ Petition No.14737/2008(S) want this Court to hold that the two vacancies, which were created, are the 'unforeseen vacancies'. This contention of the petitioners is not correct. The two vacancies are not the 'unforeseen vacancies', they were the vacancies which were already anticipated on 28.2.06, when the Commissioner of Income Tax, Shri P.K. Das, submitted a proposal for increase of the vacancies. Unforeseen vacancies would be something, which could not be anticipated or foreseen at the time of holding of the promotion proceedings, but the vacancy which was already anticipated and sanction for which was already pending consideration before the Government will not come within the purview of an 'unforeseen vacancy'. Infact the correct word to be used with regard to the present two vacancies are that they are the 'anticipated vacancies' and not the 'unforeseen vacancies'. That being so, filling up of the aforesaid two posts by persons in the waiting list on the ground that two unforeseen vacancies have arisen cannot be accepted. Infact the two vacancies were the 'anticipated vacancies', which have been sanctioned and after their sanction, they are required to be filled up in accordance to the Promotion and Recruitment Rules.

32. Accordingly, the first question formulated by this Court has to be answered by holding that the Rules in question have to be given a liberal interpretation, so that the purpose of formulating the rule is achieved to the maximum extent and if this theory is to be followed, then the interpretation canvassed by Shri K.K. Trivedi cannot be accepted.

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33. Having held so, the second aspect of the matter can be taken up for consideration.

34. Even if the contentions advanced by Shri K.K. Trivedi were to be accepted and interpretation to the Rule done in the manner canvassed, then in case the action of the authorities concerned in proceeding with the DPC on 19.5.06 is found to be unjustified and an arbitrary decision tainted with legal malice, the action of the State Government in ordering a review DPC can be upheld. To consider this question, the records and the facts available are required to be taken note of.

35. As already indicated hereinabove, it would be seen that the DPC, which met on 19.5.06 consisted on three Members. Two of the Members are Shri P.C. Das, Commissioner in the Department of Commercial Tax, and, Shri J.P. Singhal, Principal Secretary in the Department of Commercial Tax. In view of the proposed introduction of the VAT system in the State of Madhya Pradesh with effect from 1.4.06, File No.6(A)9/2006/1 was initiated, proposing increase in the cadre strength of Additional Commissioners, Dy. Commissioners, Assistant Commissioners, Assistant Commercial Tax Officer and Commercial Tax Inspectors. This proposal was initiated by the Commissioner Shri P.C. Das himself on 28.2.06, and was forwarded for approval to the Minister concerned by the Principal Secretary Shri J.P. Singhal, on 1.3.06, and thereafter when the Minister approved the proposal it was Shri J.P. Singhal, who directed for further processing of the matter and placing it before the Finance Department for financial concurrence and thereafter before the Cabinet for approval. The original file indicates that at each and every level Shri Das and Shri Singhal were in know-how of the proposal to increase the post cadre strength of Additional Commissioner by two posts and that of Dy. Commissioner by 12 posts and after due concurrence from all concerned, it is seen that "on 28.3.06, the Additional Secretary, in the General Administration Department approved the proposal and directed for placing it before the Cabinet after concurrence of the Finance Department and it was proposed to be kept in the Meeting of all the Departments on 3.4.06. Certain amendments were proposed on 12.4.06 and finally after considering the observations of the Finance Department on 21.4.06, the proposal for getting two posts sanctioned in the cadre of Additional Commissioners and 12 posts in the cadre of Dy. Commissioners was re-submitted to the Finance Department for their approval, on 21.4.06 by the Commissioner and approved by Shri J.P. Singhal on 24.4.06 and after concurrence of the Finance Department on 22.5.06, the matter was placed before the Cabinet and after approval of the Cabinet, the posts were sanctioned by orders of the Chief Secretary on 20.6.06. It is, therefore, clear on a perusal of the original file that the proposal to increase the cadre strength of Additional Commissioners by two posts and that of Dy. Commissioners by 12 posts was in the pipe-line right from 28.2.06 and even before the DPC met on 19.5.06, after complying with most of the procedural

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formalities, the final proposal was ready on 25.4.06 and when the final proposal was placed before the Finance Department after concurrence of Shri J.P. Singhal on 24.4.06, it could be assumed that on 24.4.06 Shri J.P. Singhal and Shri P.K. Das were aware of the fact that two additional posts in the cadre of Additional Commissioners are being sanctioned in due course. Considering this, it would have been more appropriate for these authorities, who were Members of the DPC, to postpone consideration so that the additional posts could be sanctioned and after its sanction a final decision taken. That apart, when all these process was going on, Shri Ashok Kumar Shukla and certain Employee's Union had submitted representation and from the documents filed by Shri Ashok Kumar Shukla, in Writ Petition No.4011/2007(S), particularly Annexure P/6, P/7 and P/8, it would be seen that the confidential reports of the 12 Dy. Commissioners, who were to be considered for promotion to the post of Additional Commissioners, for the year 2005, were not available. Confidential Report for the year 2004 was available only in the case of one officer. It was under these circumstances, when the matter was placed before the Minister, who recommended for postponement of the DPC to be held on 19.5.06. Ignoring the following factors:

- (i) Non-availability of confidential reports for 2004 and 2005 of most of the officers;
- (ii) Two additional posts are being created and, therefore, two 'anticipated vacancies' are available;
- (iii) Objection of the Employee's Union and recommendation of the Minister for postponement of the DPC;
- (iv) Postponement of the DPC in the case of promotion to the post of Dy. Collector a day before holding of the DPC.
- (v) Additional Secretary's noting that DPC may be held and the objections of the Union and others would be considered by the DPC, surprisingly the DPC did not consider the objections and submitted its report.

In the light of these factors, when the Members of the DPC themselves were aware of the fact that in the course of the year two more additional vacancies are anticipated, in all fairness they should have requested the Chairman to postpone the DPC and to consider the matter on a later date. For the reasons, which remain unexplained, not only was the DPC held on 19.5.06, but under similar circumstances or rather under identical situation, in the case of promotion to the post of Dy. Commissioner, Commercial Tax, a different yardstick was adopted and the proceedings of the DPC adjourned. Reasons for doing so is not clear and if after evaluating all these circumstances the GAD recommended for conducting a review DPC, it is the considered view of this Court that the Government has not committed

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any error in accepting the aforesaid recommendations. The conduct of the Officers and their insistence in proceeding with the DPC on 19.5.06, inspite of the fact that cogent and justifiable reasons were available for postponement of the DPC remains unexplained and, therefore, Shri Manoj Sharma is right in contending that a malafide, legal in nature, is writ large from the material available on record. The department concerned has acted in a very unreasonable, unjust and arbitrary manner and if the government has chosen to act in a reasonable and fair manner to correct the aforesaid erroneous departmental action, this Court is of the considered view that the Government has not committed any error. Even otherwise, Rule 13 of the Promotion Rules empowers the GAD to clarify matters of doubt with regard to enforcement of the Promotion Rules.

36. It may further be taken note of that when the recommendations of the DPC were made on 19.5.06, Writ Petition No.4011/2007(S) filed by Shri Ashok Kumar Shukla was pending before this Court. Notices were issued on this petition on 2.7.07 and in the meanwhile two additional posts were created on 20.6.06 i.e.,... within a month of the recommendations of the DPC. Inspite of all these, the Department proceeded to issue the promotion orders on the basis of the recommendations of the DPC on 12.7.06, 17.11.06 and 21.2.07 i.e.,... after the posts were created. The haste in the matter for doing so remains unexplained. When the two additional posts were created on 20.6.06, the promotions were not effected or ordered and on that date only a select list was prepared. Persons in the select list had no right to seek their appointment and when the entire matter was pending before the GAD, issuance of the promotion order could have been postponed. However, these were not done and on the recommendations of the GAD, the decision is taken to conduct the review DPC. It is the considered view of this Court that the decision taken by the Government in the facts and circumstances of the case is proper and the same does not warrant any interference now in these proceedings.

37. Even though during the course of hearing Shri K.K. Trivedi submitted that a review DPC cannot be held, but infact if the order-dated 11.4.08 is perused, it would be seen that what is directed is to conduct is a DPC, again after taking note of the addition of two posts and making consequential changes in the zone of consideration. This infact is the only manner in which the irregularity committed by the department can be undone for the purpose of doing substantial justice to all concerned. Therefore, this Court does not find any error in the orders passed by the State Government warranting interference, merely because this DPC to be held is termed as 'Review DPC'.

38. Accordingly, in the facts and circumstances of the case, the order passed by the State Government vide Annexure P/13, on 11.4.08, filed in Writ Petition No.4011/2007(S) is upheld. Writ Petition Nos.14737/08(S) and 14742/08(S) are dismissed in view of the above and in view of the aforesaid order passed and the

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order-dated 11.4.08, passed by the State Government, which is upheld by this Court, now no further orders are necessary in Writ Petition No.4011/2007(S) filed by Shri Ashok Kumar Shukla, and the said petition is dismissed as having been rendered infructuous because of the aforesaid reasons

39. In view of the above, Writ Petition No.4011/2007(S) is disposed of as having been rendered infructuous and Writ Petition Nos.14737/08(S) and 14742/08(S) are dismissed without any order so as to costs.

W. P. 4011/07 is disposed of.

I.L.R. [2010] M. P., 891

WRIT PETITION

Before Mr. Justice P.K. Jaiswal

18 January, 2010*

UTTAM SINGH

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

A. Panchayat Service (Discipline and Appeal) Rules, M.P. 1999, Rule 7 - Termination - Natural Justice - Petitioner removed from the post of Panchayat Karmi without holding an enquiry merely by passing a resolution - Petitioner is Panchayat Servant within the meaning of Rule 2(f) of the Rules and enjoys the protection of Rules of 1999 - In the absence of any enquiry as contained in Rule 7, the impugned orders are illegal and they are liable to be quashed. (Para 10)

क. पंचायत सेवा (अनुशासन और अपील) नियम, म.प्र. 1999, नियम 7 - सेवा समाप्ति - प्राकृतिक न्याय - याची को बिना जाँच कराए केवल प्रस्ताव पारित कर पंचायतकर्म के पद से हटाया गया - याची नियमों के नियम 2(एफ) के अर्थ में पंचायत कर्मचारी है और वह 1999 के नियमों के संरक्षण का उपभोग करता है - नियम 7 में अन्तर्विष्ट किसी जाँच के अभाव में आक्षेपित आदेश अवैध हैं और वे अभिखंडित किये जाने योग्य हैं।

B. Panchayat Service (Discipline and Appeal) Rules, M.P. 1999, Rule 2(f) & (j) - Member of Panchayat Service or a Panchayat Servant means any person appointed to the Panchayat Service - According to Rule 2(j) Panchayat Service means any Panchayat Service - Thus, the Panchayat Karmis are also included in the Panchayat Service and they are Panchayat Servants within the meaning of Rule 2(f) of the Rules. (Para 6)

ख. पंचायत सेवा (अनुशासन और अपील) नियम, म.प्र. 1999, नियम 2(एफ) व (जे) - पंचायत सेवा का सदस्य या पंचायत कर्मचारी का अर्थ है वह व्यक्ति जो पंचायत सेवा में नियुक्त है - नियम 2(जे) के अनुसार पंचायत सेवा का अर्थ है कोई भी पंचायत सेवा - इसलिए

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पंचायत कर्मी भी पंचायत सेवा में समाविष्ट हैं और नियमों के नियम 2(एफ) के अर्थ में वे पंचायत कर्मचारी हैं।

C. Panchayat (Method of Service of Notice and Document) Rules, 1995, Rule 3 - Proper service of notice - Rule 3 provided elaborate procedure for services of notice to any person - Thus, notice has to be served in accordance with the statutory provision - Service of notice in any manner contrary to statutory rules is not permissible. (Para 8)

ग. पंचायत (सूचना पत्र और दस्तावेज की तामील का ढंग) नियम, 1995, नियम 3 - सूचना पत्र की समुचित तामील - नियम 3 किसी व्यक्ति पर सूचना पत्र की तामील के लिए विस्तृत प्रक्रिया उपबंधित करता है - इस प्रकार सूचना पत्र की तामील कानूनी उपबंध के अनुसार की जानी चाहिए - कानूनी नियमों के विरुद्ध किसी ढंग से सूचना पत्र की तामील अनुज्ञेय नहीं है।

Harpreet Ruprah, for the petitioner.

Samdarshi Tiwari, G.A., for the respondent Nos.1, 4 & 5.

Rajneesh Gupta, for the respondent Nos.2 & 3.

ORDER

P.K. JAISWAL, J. :-Heard.

The petitioner in this writ petition is challenging the orders dated 1.1.2002 (Annexure P/13) passed by respondents No.2, order dated 25.9.2002 (Annexure P/14) passed by respondent No.5 and order dated 4.9.2003 (Annexure P/16) passed by respondent No.4.

2. Brief facts of the case are that the petitioner was appointed as Panchayat Karmi, Gram Panchayat Mahgawan, Chirriya of Tehsil Gadarwara District Narsinghpur. In the year 2002, respondent No.3 was elected as Sarpanch of Gram Panchayat, Mahgawan. The allegation against the petitioner was that he vide Annexure P/1 to P/7 lodged various complaints against the respondent No.3, Sarpanch of Gram Panchayat, Mahgawan which amounts to misconduct and, therefore, respondents No.2 and 3 on 10.10.2001 (Annexure P/8) directed the petitioner to appear along with the record on 20th October, 2001 before the Panchas of Gram Panchayat Mahgawan else they will take appropriate action for his removal and remove him from the post of Panchayat Karmi. In spite of notice, petitioner failed to appear before the Gram Panchayat, therefore, Gram Panchayat in its meeting dated 20.10.2001 (Annexure P/9) passed a resolution for his removal on the post of Panchayat Karmi (Sachiv). On 31.12.2001 a meeting was convened by the Gram Panchayat and during the meeting 6-7 charges of misconduct have been leveled against the petitioner. At the time of proceedings of the Gram Panchayat, petitioner was also present and he was asked to submit his case but he refused to do so and thereafter all the Panchas of the Gram Panchayat by adopting the method of secret voting and by majority of 7-4 had taken a decision

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to remove the petitioner and passed a resolution for removal of the petitioner from the post of Panchayat Karmi. In pursuance to the said resolution dated 31.12.2001, an order of termination dated 1.1.2002 (Annexure P/13) was passed. The petitioner challenged the said order by filing an appeal before the respondent No.5 who after appreciating the resolution and the documents upheld the order of termination dated 1.1.2002 and dismissed the appeal of the petitioner. The petitioner challenged the said order of respondent No.5 by filing second appeal before the Additional Collector, Narsinghpur. The learned Additional Collector by order dated 4.9.2003 (Annexure P/16) upheld the order of prescribed authority and dismissed the appeal of the petitioner. These orders are impugned in this writ petition.

3. It is submitted by learned counsel for the petitioner that the order of termination was passed without holding any enquiry under rule 7 of M.P. Panchayat Service (Discipline & Appeal) Rules, 1999 (in short 'Rules of 1999'). His further submission was that prior to passing of termination order, no show cause notice was issued to him. The show cause notice dated 10.10.2001 was never served on the petitioner and, therefore, the whole action is illegal and contrary to the provisions of Panchayat Karmi Scheme framed by the State Government on 12.9.1995 and the provisions of the Rules of 1999.

4. On the other hand, learned counsel for the respondents drew my attention to the acknowledgement Annexure R-2 and R-3 and submitted that prior to taking disciplinary action against the petitioner, notice was duly served on 10.10.2001 through Kotwar of Gram Panchayat as required under the Rules and thereafter resolution dated 31.12.2001 was passed by which as many as six charges against the petitioner were found proved and, therefore respondents No.2 and 3 have taken a decision to remove the petitioner from the post of Panchayat Karmi and in pursuance to the said resolution termination order was passed. Said action was challenged by the petitioner by filing first and second appeal which were dismissed and both the authorities very categorically held that the order was passed after service of notice to the petitioner. With the above submissions, he defended the action of Gram Panchayat and prayed for dismissal of the writ petition.

5. Learned Government Advocate on the other hand adopted the arguments advanced by the respondents No.2 and 3 and submitted that in the case of Panchayat Karmi, the Gram Panchayat was entitled to take action against the petitioner. His further submission was that the Secretary of Gram Panchayat cannot be removed or reverted without following procedure prescribed under the Rules of 1999. However, Gram Panchayat is fully competent to remove the petitioner from the post of Panchayat Karmi.

6. The Panchayat karmi Scheme is dated 12.9.1995. The Panchayat Karmi Yojna under Section 70 is not referable to rules under the provisions of the Act as the Scheme makes reference only to the provisions of sections 69 and 70 of the

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Act and not to the rule making power of the State Government. The conditions contained for appointment of officers and servants in the scheme cannot be treated to be Rules prescribing qualifications, conditions etc. but only executive instructions to the Gram Panchayat. Thereafter State Government has framed Rules, which are known as M.P. Panchayat Service (Discipline & Appeal) Rules, 1999. According to rule 2(f) "Member of Panchayat Service or a Panchayat Servant" means any person appointed to the "Panchayat Service" and includes an officer or servant elected to the Panchayat service. According to rule 2(j) "Panchayat Service" means any Panchayat Service. Thus, the Panchayat karmis are also included in the Panchayat Service and they are Panchayat Servants within the meaning of 2(f) of the Rules. They enjoy the protection of Rules of 1999. Rule 7 of the Rules of 1999 provides procedure for imposing major penalty. This procedure was not followed in this case. No charges were framed nor any witnesses were examined. No opportunity was given to the petitioner to cross-examine the witnesses. There is no enquiry report nor the charges which have been leveled against the petitioner vide resolution dated 31.12.2001 have been examined by appointing any enquiry officer nor any enquiry in respect of the said charges was held. These are the essential requisites of the procedure of enquiry contained in rule 7. Services of the petitioner were terminated without following the essential requisites of procedure of enquiry as provided under rule 7 of Rules of 1999.

7. The question requiring determination in the present case is as to whether proper procedure was followed in the matter of issuing show cause notice to the petitioner on 10.10.2001 and passing of the resolution for removing him from service. According to the petitioner the notice was never served upon him. The respondents No.2 and 3 in the return have filed report which is signed by Kotwar and it mentions that the petitioner refused to accept the notice. This document except for saying that the petitioner refused to receive notice is silent insofar as it relates to particulars of the notice, number, date and other particulars of the show cause notice are not mentioned in the return. That apart, it also does not indicate as to when, how and in whose presence the notice was tried to be served. Refusal of the same is not witnessed by any witness and even the date and time is not mentioned after signature of the person concerned.

8. Under the Panchayat Raj Adhiniyam, 1993, a statutory provision is made for the purpose of serving notice and documents. The statutory rules are known as the Madhya Pradesh Panchayat (Method of Service of Notice and Document) Rules, 1995. Rule 3 of the aforesaid case elaborates procedure for services of notice to any person. In the present case when action was taken against the petitioner under the provisions of the Panchayat Raj Adhiniyam it was incumbent upon the respondents to serve the notice in accordance with the aforesaid statutory rules. From the records it is clear that a notice in accordance with the Rules is not served. When specific rule is provided for services of notice, notice has to be

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served in accordance with the aforesaid statutory provision. Service of notice in any manner contrary to the statutory rules is not permissible. That being so it has to be held that in the present case notice in accordance with the rule have not been served on the petitioner and therefore the action taken against him is without giving him due opportunity of hearing.

9. In the case of *Kailash Babu Rai Vs. State of M.P. and others*, reported in 2008 (3) MPLJ 648, the petitioner was removed from the post of Panchayat Karmi (Secretary) vide order Annexure P/1 dated 24.8.1999. It has been held by this Court that the petitioner has been appointed as Panchayat Karmi and thereafter notified as Panchayat Secretary falls within the ambit of Panchayat Service or Panchayat Servant as defined in clause (f) of Section 2. of 1999 Rules and the removal from the services of the petitioner falls in sub clause (6) of clause (b) of Rule 5 which is a major penalty. No procedure as prescribed under rule 7 was followed nor any charge sheet as required under sub rule (2) of rule 7 was issued to the petitioner. Thus, the impugned order being in contravention of these rules are also not otherwise sustainable in law.

10. For these reasons, I am of the considered view that the petitioner is Panchayat Servant within the meaning of rule 2(f) of the Rules and enjoys the protection of Rules of 1999. In absence of any enquiry, as contained in rule (7) the impugned orders are illegal and they are liable to be quashed. Accordingly order dated 1.1.2002 (Annexure P/13) passed by respondents No.2, order dated 25.9.2002 (Annexure P/14) passed by respondent No.5 and order dated 4.9.2003 (Annexure P/16) passed by respondent No.4. are hereby quashed. In view of the interim order passed by this Court on 21.10.2003, during the pendency of the petition, the petitioner was in service. In case if it is found that he has been terminated prior to passing of interim order passed by this Court, in that event respondents No.2 and 3 are directed to reinstate the petitioner in service and pay full back wages.

11. In the result, the writ petition is allowed with cost. Counsel fee Rs.2500/-, if certified.

Petition allowed.

JOGENDRA SINGH PAL Vs. OMPRAKASH GUPTA

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WRIT PETITION*Before Mr. Justice S.K. Gangele & Mr. Justice Piyush Mathur*

25 January, 2010*

JOGENDRA SINGH PAL

... Petitioner

Vs.

OMPRAKASH GUPTA & ors.

... Respondents

A. Civil Procedure Code (5 of 1908), Order 16 Rule 6 - *Summons to produce document* - Court possesses power to issue summon for production of documents - On the basis of facts & circumstances, Court is required to ascertain the justification of documents sought to be summoned during the course of trial. (Para 8)

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 16 नियम 6 - दस्तावेज पेश करने के लिए समन - न्यायालय दस्तावेजों के पेश किये जाने के लिए समन जारी करने की शक्ति रखता है - तथ्यों एवं परिस्थितियों के आधार पर न्यायालय को चाहिए कि दस्तावेजों के औचित्य को सुनिश्चित करे, जिन्हें विचारण के अनुक्रम में समन कराना चाहा गया है।

B. Evidence Act (1 of 1872), Sections 61, 67 & 81 - *Document how to be proved* - Plaintiff has admitted the fact of publication of the magazine but has denied the contents of magazine - In this background it becomes absolutely necessary for the defendant to summon the magazine and the prayer for calling the editor/publisher/maker of the magazine - Because without calling the maker the contents could neither be proved nor a presumption could be drawn in terms of S. 81 of the Evidence Act - Trial Court erred in not allowing the application - Petition allowed. (Para 8)

ख. साक्ष्य अधिनियम (1872 का 1), धाराएँ 61, 67 व 81 - दस्तावेज कैसे साबित करें - वादी ने पत्रिका के प्रकाशन के तथ्य को स्वीकार किया, परन्तु पत्रिका की अन्तर्वस्तु से इंकार किया - इस पृष्ठभूमि में प्रतिवादी के लिए यह आत्यंतिक रूप से आवश्यक हो जाता है कि पत्रिका समन कराये और पत्रिका के संपादक/प्रकाशक/रचयिता को बुलवाने की प्रार्थना करे - क्योंकि रचयिता को बुलाये बिना अन्तर्वस्तु न तो साबित की जा सकती है और न ही साक्ष्य अधिनियम की धारा 81 के निबंधनों के अनुसार उपधारणा निकाली जा सकती है - विचारण न्यायालय ने आवेदन मंजूर न करने में गलती की - याचिका मंजूर।

Cases referred :

AIR 1971 SC 1865, AIR 1988 SC 1274, AIR 1986 SC 3, AIR 1971 SC 1864, (2008) 13 SCC 597, (2009) 5 SCC 417, (2005) 11 SCC 600, (2006) 5 SCC 239.

V.K. Bharadwaj with Anand Bhardwaj, for the petitioner.

U.K. Jain, for the respondents.

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O R D E R

The Order of the Court was delivered by **PRYUSH MATHUR, J.** :- This Writ Petition has been preferred by the defendant/Tenant/petitioner Jogendra Singh Pal, a Tenant inducted in the premises owned by the plaintiffs/respondents Omprakash Gupta, Khem Chand Gupta, Radhelal Gupta & Kalicharan Gupta whose application, preferred under Order 16 Rule 1 (6) of CPC has been rejected vide Order Dated 12.12.2009 by the 8th Civil Judge, Class-II, Gwalior in Civil Suit No. 48-A/2009.

2. The plaintiffs have preferred a suit seeking eviction of the Tenant in terms of the provisions of Section 12 (1) (a) & (f) of M.P. Accommodation Control Act by demonstrating the personal need of plaintiff/respondent No. 3 and his son for running a business. The plaint allegations were denied by the defendant/Tenant in his Written Statement by advancing the defence that the disputed shop is not actually required for commencing the business as the persons for whom the need has been raised are already running a business of selling Readymade Garments.

3. The record reveals that on previous two occasions, the Tenant Jogendra Singh Pal/defendant/petitioner has approached this Court in W.P. No. 5659/2006 and the Landlord in W.P. No. 3608/2008 where this Court had granted permission for allowing the amendment application preferred by the defendant/Tenant in terms of Order 6 Rule 17 CPC and subsequently in the plaintiffs' writ petition, this Court has permitted the plaintiffs to produce the evidence in rebuttal.

4. Shri V.K. Bharadwaj, Learned Senior Counsel appearing for the Tenant/petitioner has submitted that based upon the pleadings of the written statement regarding running a business by the persons for whom the need has been raised, the plaintiff-Radhelal Gupta was examined and cross examined and a question was put to him that the plaintiffs belong to Mahor Gaur Vashya Samaj and a Magazine of their Samaj was published wherein the details of her daughter Ms. Pinki Gupta was published wherein the occupation of the father was described as running a shop of selling Readymade Garments and the witness has admitted the fact that the Magazine of this nature was published by the Samaj but the witness Radhelal Gupta has clearly denied the fact about information being given by him for the publication in the Magazine about his occupation. Shri Bharadwaj submitted that since the witness has admitted the publication of the Magazine but has denied the contents regarding his business, therefore, it was necessary for the Tenant to have summoned the Editor/ Publisher/Maker of the Magazine, to prove the contents about occupation of the plaintiff/witness.

5. Shri V.K. Bharadwaj, Learned Senior Counsel appearing for the Tenant/petitioner has relied upon a Judgment of the Supreme Court reported as AIR 1971 SC 1865 = (1972) 4 SCC 562 *Sait Tarajee Khimchand and Others Vs. Yelamarti Satyam Alias Sattayya and Others*, where the Supreme Court has observed that

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mere marking of the Exhibit on a document does not dispense with the requirement of proving the document and on the basis of this Judgment Shri Bharadwaj submitted that unless the Editor/Publisher/Maker of the Magazine are examined/ cross examined, the contents of the document which has been Exhibited as Annexure D/14 during the cross examination of plaintiff Radhelal Gupta could not be treated to be proved in terms of the provisions of the Indian Evidence Act.

6. Shri Bharadwaj has further argued that in a celebrated Judgment of the Supreme Court reported as AIR 1988 SC 1274 = (1988) 3 SCC 319 *Laxmi Raj Shetty and Another Vs. State of Tamil Nadu*, the Supreme Court while examining the scope and sweep of Section 81 of the Indian Evidence Act has observed in relation to the newspaper report that the contents of news items are merely hearsay and unless the Editor/ Publisher/Maker of the newspaper is examined, the contents thereof cannot be treated to be duly proved. Shri Bharadwaj while advancing the analogy of Section 81 of the Indian Evidence Act has argued that the Supreme Court has clearly observed in its Judgment reported as AIR 1986 SC 03= 1985 (Supp.) SCC 611 *Ram Singh and Others Vs. Col. Ram Singh*, while examining a case of Representation of the People's Act that Section 61, 67 & 81 of the Indian Evidence Act provides for the manner and method of proving a document as also its contents and since a document, contents whereof were not proved by examining the maker thereof, would not be admissible in the evidence. Shri Bharadwaj further submits that the Trial Court has materially erred in not allowing the application for summoning the Document and the Editor/ Publisher/Maker of the Magazine for facilitating the Tenant/petitioner to prove the contents of the Magazine, about the fact of occupation of the plaintiff Radhelal Gupta.

7. Shri U.K. Jain, Learned Counsel for the Plaintiff has argued that the Tenant had earlier approached this Court by preferring W.P. No. 5659/2006, where his amendment application was allowed by the Court and the witness Radhelal Gupta was permitted to be recalled for cross-examination and when the cross-examination was permitted by this Court and the document Annexure D/14 (extract of the Magazine) was Exhibited during cross-examination, the Trial Court has not committed any error in rejecting the prayer for summoning the Editor/ Publisher/Maker of the Magazine. He further submitted that this Court has clearly granted permission to the plaintiff to lead evidence in rebuttal in view of the liberty granted to the Tenant and after adaptation of the aforesaid procedure by the Trial Court nothing survives for interference in the present Writ Petition by this Court.

8. A perusal of Sub-rule (6) of Order 16 of CPC demonstrate that a Court possesses the power to issue a summon for the production of the document and the Court is required to ascertain the justification of the documents sought to be summoned during the course of the Trial. The pleadings and arguments of the parties demonstrate that the plaintiff Radhelal Gupta has admitted the fact of publication of the Magazine but has clearly denied the details concerning his

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occupation of running a Readymade Garments Shop, which was mentioned in the column of the occupation of the father of the daughter Pinki Gupta and in this background it becomes absolutely necessary for the defendant to summon the documents and the prayer of calling the Editor/Publisher/Maker of the Magazine. It is not a case where the plaintiff Radhelal Gupta had admitted the contents of the document whereafter the requirement of Sections 61, 67 and 81 of Indian Evidence Act would have been accomplished but when he has emphatically denied the contents, a party is left with no choice, except to summon the Maker of the document, because without calling the Maker of the document, the contents could neither be proved nor a presumption could be drawn in terms of Section 81 of the Indian Evidence Act. The Learned Counsel for the Tenant/petitioner has rightly relied upon the two judgments of the Supreme Court reported as AIR 1971 SC 1864 *Mukhtiar Singh Vs. State of Punjab* and AIR 1988 SC 1274 *Laxmi Raj Shetty and Another Vs. State of Tamil Nadu*, where the Supreme Court has found the necessity of recording the statement of the Maker of the document.

9. While examining the analogy of Section 81 of the Indian Evidence Act in the case of *Laxmi Raj Shetty and Another Vs. State of Tamil Nadu* reported as AIR 1988 SC 1274, the Supreme Court has recently relied upon the same analogy, which was propounded in its earlier Judgment while pronouncing the latest Judgment in the case of *Bharat Sanchar Nigam Limited and Another Vs. BPL Mobile Cellular Limited and Others* reported as (2008) 13 SCC 597, which clarifies that the view taken in the Year 1988 by the Supreme Court has still been found to be correct in relation to the newspaper report being hearsay evidence as also the necessity of examining the Maker of the document.

10. Since the plaintiff Radhelal Gupta has denied the contents of the document, it would be useful to make a reference to another latest decision of the Supreme Court reported as (2009) 5 SCC 417 *All India Anna Dravida Munnetra Kazhagam Vs. L.K. Tripathi and Others*, where the Supreme Court has observed that when the witness denies the fact, which needs to be proved in terms of provisions of Section 61 and 67 of the Indian Evidence Act, therefore for that purpose the Maker of the document should be examined.

11. In yet another Judgment reported as (2005) 11 SCC 600 *State (NCT OF Delhi) Vs. Navjot Sandhu*, the Supreme Court has observed in paragraph No. 154 and 155 that the question of admissibility of Evidence should be strictly examined by the Courts.

12. It would not be out of place to mention another analysis of the situation, where a witness is forced to appear before the Court for deposing about a fact which also infringes the right or a privilege available to him under any independent law but even in this situation the Supreme Court has found the necessity to summon the witness for the just decision of the case, when a question of calling witnesses

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in an Election matter arose, for the purposes of putting several questions, including the question relating to the fact about casting of vote in favour of a particular candidate, the Supreme Court, while examining this aspect in the case of *Nayini Narasimha Reddy Vs. Dr. K. Laxman & Others* reported as (2006) 5 SCC 239 has observed that even when the voter has a privilege of not making disclosure of the fact about casting of vote in favour of a particular candidate, the Court has observed in the following terms, the necessity of summoning a witness :

"14. It is one thing to say that the civil court while issuing a summon must exercise its jurisdiction in terms of sub-rule (2) of Rule 1 Order 16 of the Code of Civil Procedure but it is another thing to say that the court would refuse to summon the witness only because a question as regards exercise of the privilege of the witness may arise. The court may not refuse to exercise its jurisdiction only on the ground that by reason thereof the privilege of a voter may be violated."

13. In the back drop of aforesaid factual and legal discussion, it is apparent that when the plaintiff Radhelal Gupta had denied correctness of the contents of the Maker of the document during the course of his cross-examination, the allegations or arguments about the delay being caused in preferring an application for summoning the document/witness could not be treated to be a convincing argument although in the peculiar facts and circumstances of the case, the application was moved by the Tenant/petitioner soon after completion of the statements of the witnesses, when he denied the contents of the document and as such the prayer made in terms of Order 16 Rule 6 of CPC could have not been refused by the Court below. Similarly, the arguments of Shri U.K. Jain would have no relevance or significance when he argues that the evidence was being led in rebuttal and it was not original evidence or information given by the plaintiff himself and the Maker of the document could have not been summoned.

14. Therefore, in view of the provisions of law holding the field in relation to Order 16 Rule 6 CPC as also in view of the Judgment of the Supreme Court, We find that the Trial Court has committed a serious error of law in not allowing the application preferred by the Tenant under Order 16 Rule 6 of CPC and as such the impugned Order passed on Date 12.12.2009 by the 8th Civil Judge, Class-II, Gwalior in Civil Suit No. 48-A/2009 is set aside and the application moved by the Tenant/petitioner under Order 16 Rule 6 of CPC is allowed with a direction to the Court below to summon the documents and proceed in terms of Order 16 of CPC.

15. Therefore, the Writ Petition is allowed, however, there shall be no order as to costs.

Petition allowed.

ANJUM SHEKH (SMT.) Vs. STATE OF M.P.

I.L.R. [2010] M. P., 901

WRIT PETITION

Before Mr. Justice K.K. Lahoti

29 January, 2010*

ANJUM SHEKH (SMT.)

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

A. Service Law - Necessary party - Select list of Shiksha Karmis challenged without impleading appointed candidates as party in appeal - Appellate Authority set-aside the selection list - Held - When the appointed candidates were directly affected in the matter they ought to have been impleaded as party - In such circumstances by non-impleading such candidates, there was serious defect of non-joinder of necessary party. (Para 13)

क. सेवा विधि - आवश्यक पक्षकार - शिक्षा कर्मियों की चयन सूची को नियुक्त अभ्यर्थियों को अपील में पक्षकार बनाये बिना चुनौती दी गयी - अपील प्राधिकारी ने चयन सूची को अपास्त किया - अभिनिर्धारित - जब मामले में नियुक्त अभ्यर्थी सीधे प्रभावित हुए थे, उन्हें पक्षकार बनाया जाना चाहिए था - इन परिस्थितियों में ऐसे अभ्यर्थियों को पक्षकार न बनाने से आवश्यक पक्षकार के असंयोजन की गम्भीर त्रुटि हुई।

B. Service Law - Natural justice - 22 Shiksha Karmis were selected and appointed - Before Appellate Authority allegations were made only against 8 candidates - Appellate Authority set-aside the whole selection list. - Held - When no allegations were made against others, setting-aside the entire selection process has caused serious injustice to those persons who were not extended even an opportunity of hearing before the Appellate Authority - Principle of natural justice requires that such an opportunity of hearing should be extended until & unless it is found that no such opportunity was necessary - Order of Appellate Authority quashed - Petition allowed. (Para 14)

ख. सेवा विधि - नैसर्गिक न्याय - 22 शिक्षा कर्मियों का चयन और नियुक्ति - अपील प्राधिकारी के समक्ष केवल 8 अभ्यर्थियों के विरुद्ध अभिकथन किये गये - अपील प्राधिकारी ने सम्पूर्ण चयन सूची को अपास्त किया - अभिनिर्धारित - जब अन्य के विरुद्ध कोई अभिकथन नहीं किये गये, तब सम्पूर्ण चयन प्रक्रिया अपास्त करने से उन व्यक्तियों के साथ घोर अन्याय हुआ जिन्हें अपील प्राधिकारी के समक्ष सुनवाई का अवसर तक नहीं दिया गया - नैसर्गिक न्याय का सिद्धांत यह अपेक्षा करता है कि सुनवाई का ऐसा अवसर दिया जाना चाहिए जब तक कि यह नहीं पाया जाए कि ऐसा कोई अवसर आवश्यक नहीं था - अपील प्राधिकारी का आदेश अभिखंडित - याचिका मंजूर।

Cases referred :

AIR 1985 SC 167, (2003) 7 SCC 285, W.A. No.1254/08 Puneet Dixit & ors. Vs. State of M.P. & ors. decided on 04.02.2009, 2003(II) MPJR SN 13, 2006(3) MPLJ 154, W.P. No.4692/05 Nitendra Kumar Tiwari Vs. State of M.P.

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decided on 11.03.2008, W.P. No.9585/05 Shyam Kishore Sharma Vs. State of M.P. & ors. decided on 25.09.2006, (1994) 4 SCC 165, (2002) 3 SCC 146.

Rajendra Tiwari, R. Tiwari, Ashish Shroti, M.S. Bhatti & Rajneesh Gupta, for the petitioners.

Samdarshi Tiwari, G.A., for the respondent Nos.1 & 2.

Arun Nema, for the respondent Nos.3 & 4.

Amit Dubey, for the respondent Nos.5 to 10.

ORDER

K.K. LAHOTI, J. :- This batch of petitions is arising out of a common order dated 15.12.2005 by the Additional Collector, Hoshangabad in Appeal No.6-B/121 of 1998-99 and is being decided by this common order.

2. By the impugned order the Additional Collector, Hoshangabad set aside the entire selection of Shiksha Karmis made by respondents. The order has been assailed by the petitioners mainly on following grounds :-

(1) That all the petitioners who were selected through the process of selection were not made party before the Additional Collector, Hoshangabad. The Additional Collector, Hoshangabad without extending any opportunity of hearing set aside the selection and appointment in favour of petitioner.

(2) That for the selection of Shiksha Karmi Grade I, II and III an advertisement was issued on 18.5.1998 for 25 posts for various subjects including Shiksha Karmi in Urdu subject. The last date of application was 17.7.1998. For Shiksha Karmi Grade I and II the interview was held on 19.8.1998 and for Shiksha Karmi III on 20.8.1998. On 5.9.1998 Shiksha Karmi Grade I and II were appointed and on 7.9.1998 Shiksha Karmi Grade III were appointed. Though two posts of Shiksha Karmi Grade I and one post of Shiksha Karmi Grade II remained vacant. After appointment, all the petitioners joined their respective posts. The respondents Manoj Kumar Singhwane, Ku.Nikita Mishra, Ku.Smita Mishra, Vivek Sharma, Shriram Kurmi and Devraj Mandlekar challenged the selection process and appointment of petitioners, but without impleading them. The matter remained pending before the Additional Collector, Hoshangabad for a considerable long period of nearabout 7 years, but the respondents had not made any effort to implead or issuance of notices to the petitioners. In absence of extending an opportunity of hearing the selection and appointment of petitioners ought not to have been set aside.

(3) Before the Additional Collector allegations were against 8 persons, 2 of Grade I, 2 of Grade II and 4 of Grade III. No

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allegations were made against others. When no allegations were made against other persons, the Additional Collector ought not to have set aside the entire selection and could have weeded out the persons against whom the allegations were made or proved.

(4) In the alternative, it was submitted by Shri Rajendra Tiwari, learned Senior Advocate and Sarvashri Ashish Shrotri, Rajnesh Gupta that in respect of persons against whom allegations were made and found, the matter may be remanded after extending an opportunity of hearing to them.

The petitioners have placed reliance to the Apex Court judgment in *Prabodh Verma and others Vs. State of Uttar Pradesh and others* (AIR 1985 SC 167), *All India SC and ST Employees Association and another Vs. A. Arthur Jeen and others* (AIR 2001 SC 1851) *Union of India and others Vs. Rajesh P.U., Puthuvalnikathu and another* [(2003) 7 SCC 285] in support of the contention that without impleading selected and appointed candidates their appointment ought not to have been set aside.

(5) The petitioners also placed reliance to the various judgments of this Court in respect of same ratio. The Division Bench decision of this Court in W.A.No.1254/2008 *Puneet Dixit & others Vs. State of M.P. & others* dated 4.2.2009, *Union of India & others Vs. Vinod Kumar Dwivedi* [2003(II) MPJR SN 13], *Kuldeep Shyam and others Vs. State of M.P. & others* [2006(3) MPLJ 154] and unreported judgment *Nitendra Kumar Tiwari & others Vs. State of M.P. & others* W.P.No.4692/2005 dated 11.3.2008, *Ambesh Mishra & others Vs. State of M.P. & others* W.P.No.9582/2005 dated 25.9.2006, *Shyam Kishore Sharma & others Vs. State of M.P. & others* decided on 13.9.2007.

It was submitted by learned counsel that the impugned order may be quashed.

3. Sarvashri Samdarshi Tiwari, Arun Nema and Amit Dubey, learned counsel appearing for respondents supported the order. It was submitted by them that entire process of selection vitiates because of serious illegalities and the Additional Collector rightly set aside the entire selection, in which no interference is needed by this Court. It was submitted that the findings of Additional Collector are in respect of serious illegalities of non following of reservation roster, appointment of relations. It was submitted that on the aforesaid grounds no interference is needed in the impugned order. Reliance is placed to the Apex Court judgment *Krishan Yadav and another Vs. State of Haryana and others* [(1994) 4 SCC 165] and *Union of India and others Vs. O. Chakradhar* [(2002) 3 SCC 146].

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Referring aforesaid it was submitted by Shri Samdarshi Tiwari that no prejudice is caused to the petitioners because of non impleadment in the appeal before the Additional Collector.

4. To appreciate rival contention of the parties it would be appropriate if factual position in the case is stated. The respondent Municipal Council, Seoni Malwa issued an advertisement on 18.5.1998 for selection of appointment on the post of Shiksha Karmi Grade I, II and III. The Advertised posts were as under :-

1. Grade I - 6 posts
2. Grade II - 4 posts
3. Grade III - 15 posts

The last date of submitting application was 17.7.1998. All the applicants were called for interview which was conducted on 19.8.1998 and on 20.8.1998. On 5.9.1998, 4 persons were appointed as Shiksha Karmi Grade I and 3 persons were appointed as Shiksha Karmi Grade II. On 7.9.1998, 15 persons were appointed as Shiksha Karmi Grade III, thus total 22 persons were appointed as Shiksha Karmis. 2 posts in Grade I and 1 post in Grade II remained vacant due to non availability of suitable candidates. The aforesaid selection was challenged on 8.10.1998 in respect of the appointment of Shiksha Karmi Grade III dated 7.9.1998. Mainly allegations were made against Ms. Anjum Ara. and Bahadur Singh who were appointed as Shiksha Karmi Grade III. The appeal was preferred by Manoj Kumar Singhwane, Ku. Nikita Mishra, Ku. Smita Mishra, Vivek Sharma, Shriram Kurmi and Devraj Mandlekar, who are respondent nos. 5 to 10 herein. In the appeal the Chief Municipal Officer, Municipal Council, Seoni Malwa and selection committee were impleaded as respondents. No selected candidate was impleaded as party inspite of the fact that allegations were made against Ms. Anjum Ara and Bahadur Singh before the Additional Collector.

The respondent nos. 5 to 10 raised following issues :-

- (i) That the reservation roster was not followed.
- (ii) No receipt was issued to the candidate at the time of submitting their application.
- (iii) That the candidates who were more meritorious and were possessing more than 60% marks were not called in the interview, while the candidates possessing 50-55% marks were called for interview.
- (iv) That no reservation for handicapped persons was made.
- (v) That at the time of selection Block Education Officer and Lecturers were not included in the selection committee, but the persons of choice of respondents were the member of selection committee.

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(vi) The Shiksha Karmis who were possessing experience of more than 2 years were given only 1-2 marks out of 15, while the fresh candidates who were neither possessing adequate percentage of marks in the Board examination, nor were Shiksha Karmis even then were awarded 15 marks out of 15.

(vii) That the Vice President of Municipality Zameel Khan selected his Bhanji (Sister's daughter Anjum Ara) who was not eligible. She was never a Shiksha Karmi, but inspite of this she was awarded 17 marks of bonus and was selected..

(viii) That Anjum Ara furnished a forged certificate of experience. She had worked without any salary or honorarium and on the basis of such certificate she was awarded 17 bonus marks and 15 marks out of 15 in the interview.

(ix) Another candidate Bahadur Singh, who was studying at Bhopal furnished forged certificate of experience. He was awarded 17 marks of bonus and selected, while he is relation of a member of selection committee.

(x) That the selection committee selected some of women candidates who were residing since last more than 10 years with their in-laws. These were close relations of members of Municipality, members of selection committee or the daughters of Councillors.

(xi) That the selection committee had not issued receipt of the applications. They have not disclosed who were selected. Particulars of selection, their marks in examination, interview and bonus were not disclosed.

(xii) That one candidate who was earlier tribe and changed his religion as Christian was selected in the reserved quota of tribals.

On the aforesaid ground the entire selection and appointment dated 7.9.1998 was assailed.

5. The appeal was filed before the Collector Hoshabgabab, who transferred the appeal to the Additional Collector, Hoshangabad. The Additional Collector issued notice to the parties and sent for the record of Municipal Council, Seoni Malwa. On 8.1.1999 the applicants, Chief Municipal Officer, Seoni Malwa, the representatives of Deputy Director Shri Mangalsingh Raghuwanshi, B.P. Baghel. Incharge Principal, Smt. Rita Modi, Lecturer, Zameel Khan, Vice President Municipality, O.P. Rai, Councillor appeared. The Presiding Officer heard the arguments on 22.7.1999. As the relevant record was summoned by Chairman District Vigilance Committee, Bhopal (Lok Ayukt Sangathan), so the matter

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remained pending before the Additional Collector. Thereafter on 12.8.2005 record was received by the Additional Collector and both the parties were heard. The Additional Collector in the impugned order recorded following findings :-

(a) That the Municipal Council, Seoni Malwa issued an advertisement on 18.5.1998 for the appointment of Shiksha Karmis Grade I, II and III. The aforesaid appointments were to be made as per the rules namely M.P. Municipality Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1998. As per the advertisement vacancies were for Shiksha Karmi Grade I = 6 posts, Shiksha Karmi Grade II = 4 posts and Shiksha Karmi Grade III = 15 posts. The applications were invited upto 5.6.1998. For the selection the selection committee was constituted and on 19.8.1998 interviews were called for Shiksha Karmi Grade I, II and Urdu subject and 20.8.1998 for Grade III. The Additional Collector referred in para 6 of the order in respect of persons who were selected in the interview alongwith their marks. So far as Shiksha Karmi Grade I in subject History and Sanskrit and Shiksha Karmi Grade II in Arts remained vacant. As no application was received for these.

(b) In para 7 of the judgment the Additional Collector considered the record and recorded following findings :-

- (i) That at the time of submitting application no receipt was issued to the applicants and this fact was brought into the notice of Project Officer District Urban Development Tribunal, Hoshangabad and this error was rectified, but none of the respondents or their Advocates could show any documents that the applicants were issued receipt of form.
- (ii) That the reservation was not followed while in this regard the State of M.P., School Education Department issued specific direction on 22.6.1998. In the selection process the President of Municipal Council, Seoni Malwa, Smt Sema Mishra was Chairman who was not entitled to be the Chairman of the selection committee as she was chairman of Municipal Council. No directions were sought in this regard from the Higher Officials.
- (iii) In respect of selection of Shiksha Karmi Grade I Ku. Shrada Singhal the Additional Collector found that the allegations against her were not proved.
- (iv) In respect of Bahadur Singh and Anjum Ara the

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Additional Collector, considered in para 7, later part of page 9, of the order that the certificate issued by Pradhan Pathak Government Girls Primary School Bhanpura the column of experience was lying vacant. She imparted teaching between 1.8.1997 and 28.2.1998 on her own will without any remuneration.

- (v) The Additional Collector considered the certificate issued in favour of applicant Ku.Smita Mishra, another applicant Shriram Kurmi and found that both the certificates were duly issued and forwarded by the authority. On the basis of these certificate Ku.Smita Mishra and Shriram Kurmi were awarded 17 marks each in the selection process, while Bahadur Singh and Anjum Ara were awarded 9 marks each. The Additional Collector found that Anjum Ara earned 57.55 marks and Ku.Smita earned 55.50 marks, Bahadur Singh earned 57.56 marks, while Shriram Kurmi earned 55.42 marks. On the basis of this Additional Collector found that the committee had not independently awarded the marks and infact their experience certificate were not seriously considered.
- (vi) In the select list of Grade III overwriting, corrections were found by the Additional Collector. He found that in front of Ms.Geeta Dhurve, Jitendra Kapoor, Chandrashekhar Singhna earlier a 'dash' was marked, but subsequently marks were given to them. On this correction nobody signed. Similarly in Grade III for Ms.Pushpadas earlier in column of experience was recorded as 'nil'. No certificate was enclosed in respect of her experience alongwith application. Though photo copy of letter of one local private School dated 1.7.1992 was enclosed, but the selection committee had not awarded any marks to her. She achieved 31.89 marks and her selection was in the reservation quota of Scheduled Tribe women. In respect of Ms.Pushpadas contention of applicant was not accepted.
- (vii) The Additional Collector recorded a finding that in respect of selected candidates no waiting list was prepared and published, while directions were issued by the State Government in this regard. These instructions were well within the knowledge of Municipal Council.

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- (viii) One Manit Dubey who was selected as Shiksha Karmi Grade I in Economics, he was not Post Graduate in the subject, but he was appointed which creates doubt in respect of selection process.
- (ix) The Additional Collector found that as per the direction issued by the High Court in W.P.No.4792/1998 dated 16.10.1998 the selection process took place contrary to the rules and instructions of the Government. There were irregularities in the selection on the basis of aforesaid correction and overwriting. On the aforesaid ground, the Additional Collector found the entire selection process was doubtful, arbitrary and irregular. He found that the then Chief Municipal Officer, R.K.Pandey, was at fault and proceedings were directed to be initiated against him for non-compliance of rules and instructions of the Government.

On the aforesaid grounds, the Additional Collector set aside the entire selection process and appointment of petitioners.

6. Now the contentions raised by the parties may be examined. The important question in the petition is whether the petitioners herein were necessary party to the appeal filed before the Additional Collector or respondent nos.3 & 4 who initiated selection process, selected the candidates and appointed them were duly representing the interest of applicants may be examined.

7. Shri Samdarshi Tiwari, learned Government Advocate in support of his contention that it was not necessary for the Additional Collector to extend an opportunity of hearing to the petitioners or without impleading them, if the appeal is decided then the order is just and proper. He placed reliance to the Apex Court judgment in *Krishan Yadav and O.Chakradhar* (supra).

8. Firstly the judgment cited by Shri Tiwari in *Krishan Yadav* may be seen. In the aforesaid case, the selection board selected Taxation Inspectors. The selection was challenged on the ground of fraud, nepotism, favoritism and arbitrariness. In the said selection process the appellants before the Apex Court though achieved excellent performance in the written test, but were not appointed. The Apex Court considering the serious allegations made in the petition referred the case to the CBI for investigation. The CBI investigated the matter and submitted its report before the Apex Court verifying the fact of favoritism, selection without interview as also on the basis of fake or ghost interviews, tampering with final records, fabrication of documents, forgery, keeping the selection list a secret, issuing appointment letters after calling selected candidates and obtaining joining reports from them on the spot. The CBI also reported that without any medical

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test and verification of antecedents by destroying the original records including the answer books, appointments were made. On the aforesaid ground the Apex Court found that the entire selection vitiated by fraud, nepotism, favoritism and arbitrariness and set it aside. The Apex Court further directed that fresh selection be made of the Taxation Inspectors. The Apex Court in para 20 of the judgment held thus :-

“20. In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as “fraud unravels everything”. To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly we hereby set aside the selection of Taxation Inspectors.”

On the aforesaid ground the Apex Court set aside the appointment of 96 candidates including respondents. From the perusal of aforesaid, it is apparent that some of appointees were before the Apex Court, who were heard by the Apex Court.

9. But in this case position is entirely different. None of the candidates or appointees were before the Additional Collector to put forth the grievance or represent their case before the Additional Collector. So on facts, the case of Krishan Yadav is entirely different and is not applicable.

10. Another judgment which is relied on by Shri Samdarshi Tiwari is *O. Chakradhar* (supra). In the aforesaid judgment, the Apex Court considering the cancellation of select list on the ground of illegality and irregularity in conducting the selection held that individual notice to candidates was not necessary because the mischief in conducting the selection was so wide affecting the result that it was difficult to identify the persons unlawfully benefited or wrongfully deprived of selection. On these grounds the Apex Court cancelled the whole selection without issuing individual show-cause notice to each person selected. The Apex Court further held that the motive behind the irregularities was relevant. In the said case in the recruitment to the post of Junior Clerk-cum-Typist, the typewriting test which was essential requirement was not conducted. In the said case also a report of CBI in respect of serious nature of irregularity was directed. Thereafter the Railway Board took a decision cancelling entire panel and to terminate the service of all the candidates selected.

But in this case the factual position is entirely different. The respondents nos. 5 to 10 challenged the selection of only 2 persons namely Ms. Anjum Ara and

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Bahadur Singh on specific grounds. Though the Additional Collector recorded aforesaid finding, but without extending any opportunity of hearing to the petitioners herein.

Now the judgments relied on by the petitioners may be seen. In *Prabodh Verma* (supra) the Apex Court in para 30 of the judgment held that the writ petition filed before the High Court was suffering from incredible defects namely non-joinder of necessary party. Those who were vitally affected were not made party, not even by joining some of them in their representative capacity because their number was too large. The Apex Court held that the High Court ought not to have decided a writ petition under Article 226 of the Constitution, without the persons who would be vitally affected by the judgments before it. The Apex Court on the aforesaid ground set aside the judgment of High Court.

11. In *A. Arthur Jeen* (supra) the Apex Court held that the selected candidates who were seriously affected had every right to challenge the decision of Tribunal on all grounds available to them. The Apex Court considering the question of candidates in the panel showing their provisional selection held that they do not get vested right to appointment, but they will be surely interested in protecting and defending the select list. None of such candidates was made party before the Tribunal. The Apex Court held that atleast some of them ought to have been impleaded to represent the case of successful candidates. The Apex Court reiterated the law laid down in *Prabodh Verma* (supra).

12. In *Rajesh P.U. Puthuvalnikathu* (supra) the Apex Court considering the fact that only in respect of the candidates against whom allegations were found proved by the CBI, others were entitled to be appointed and it would not be appropriate to take extreme decision of cancelling entire selection. In other judgments as cited of this Court by Division Bench and Single Bench, the same principle has been reiterated.

13. In this case it is not in dispute that none of the appointed person was impleaded as party before the Additional Collector. The appeal was filed long back on 8.10.1998 and remained pending for a considerable long period of 7 years before the Additional Collector. As stated hereinabove that nearabout 22 candidates were selected and it was not a so large number of selection that individual candidates could not have been served. During the pendency of appeal before the Additional Collector, no effort was made for serving these appointed persons or any of them to represent their case before the Collector. In absence of which the right of petitioners was affected seriously by not impleading them as party. When the petitioners were directly affected in the matter they ought to have been impleaded as party. In such circumstances, by non impleading petitioners, there was serious defect of non-joinder of necessary party.

14. Apart from this, the respondents challenged the selection dated 7.9.1998 in

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respect of Shiksha Karmi Grade III by which 15 persons were appointed. So far as Shiksha Karmi Grade I and II, these were appointed on 5.9.1998. In the appeal filed by respondents nos.5 to 10 no allegations were made in respect of Shiksha Karmi Grade I & II. The respondents nos.5 to 10 raised allegations against Ms. Anjum Ara and Bahadur Singh, who were selected in Grade III. The Additional Collector while considering the case found that during the course of arguments allegations were made in respect of 8 persons. Out of Grade I candidates, allegations were made against Ku. Shradha Singhal and Manit Dubey. From Grade II allegations were made against Ms. Geeta Dhurve, Jitendra Kapoor. From Grade III allegations were made against Ms. Anjum Ara, Bahadur Singh, Chandrashekhar Singhna and Ms. Pushpadas. So the appointment of these 8 persons was assailed before the Additional Collector. Even during the arguments before him out of total selected 22 candidates allegations were made only in respect of 8 persons. So far as Ms. Shradha Singhal is concerned, Additional Collector in para 7 on page 9 found that allegations against her were not acceptable. Similarly in respect of Ms. Pushpadas, Additional Collector has not found any allegations proved. In respect of others though findings have been recorded against them, but without extending any opportunity of hearing. When no allegations were made against others, setting aside the entire selection process has caused serious injustice to those persons who were not extended even an opportunity of hearing before the Additional Collector. Principles of natural justice requires that such an opportunity of hearing should be extended until and unless it is found that no such opportunity was necessary.

15. In respect of other allegations that no receipt was issued to the candidates, reservation was not followed, certificates produced by some of the candidates were not duly verified or there was some correction in the select list, in this regard a thorough enquiry ought to have been made by the Additional Collector, that too after extending an opportunity of hearing to the petitioners. He also ought to have verified the award of marks to these persons on the basis of material produced by these persons in the selection process, but it appears that all these issues have escaped from the notice of the Additional Collector.

16. The Additional Collector ought to have considered a fact that whether selection of other persons against whom no allegations were made could have been sustained under the law. If no allegations were made against others and their selection was not challenged directly or indirectly, the entire selection ought not to have been cancelled by the Collector.

17. In W.P.No.5753/2006(S) (*R.K.Pandey Vs. State of M.P. & others*), the petitioner R.K.Pandey, who was the Chief Municipal Officer at Seoni Malwa has assailed the order of Additional Collector, Hoshangabad, by which it is directed to initiate disciplinary proceedings against him. As the order dated 15.12.2005 itself has been quashed, so it is not necessary to pass a separate order in this regard.

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However if the respondents in future require to initiate any proceedings against him they shall follow the procedure of law and can take action against him in this regard. The order so far as it relates directing disciplinary proceedings against this petitioner, at present is also quashed.

18. In view of aforesaid, the order passed by the Additional Collector Annexure P-3 is not sustainable under the law and is hereby quashed. These petitions are allowed, with no order as to costs.

Petition allowed.

I.L.R. [2010] M. P., 912

WRIT PETITION

Before Mr. Justice K.K. Lahoti & Mr. Justice R.S. Jha

1 February, 2010*

JANSAHYOG GRIH NIRMAN SAHKARI

SANSTHA MARYADIT

... Petitioner

Vs.

DEPUTY REGISTRAR & anr.

... Respondents

A. Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 69(3), Cooperative Societies Rules, M.P. 1962, Rule 75 - *Winding up of Society - Natural Justice - An order of winding up of a Society is penal in nature having civil consequences - Before taking such an action, principles of natural justice ought to have been followed - Rule 75 provides a specific procedure for service of summons which ought to have been followed - Service of notice on the Society not in accordance with the procedure - Serious prejudice has been caused to the Society who has suffered an order of winding up.* (Para 18)

क. सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 69(3), सहकारी सोसाइटी नियम, म.प्र. 1962, नियम 75 - सोसाइटी का परिसमापन - नैसर्गिक न्याय - सोसाइटी के परिसमापन का आदेश शास्तिक प्रकृति का है जिसके सिविल परिणाम हैं - ऐसी कार्यवाही करने से पूर्व नैसर्गिक न्याय के सिद्धांतों का अनुसरण अवश्य किया जाना चाहिए था - नियम 75 समन की तामील की विनिर्दिष्ट प्रक्रिया का उपबंध करता है जिसका अनुसरण किया जाना चाहिए था - सोसाइटी पर सूचना पत्र की तामील प्रक्रिया के अनुसार नहीं - सोसाइटी को गम्भीर पूर्वाग्रह कारित हुआ है जो परिसमापन के आदेश से पीड़ित हुई है।

B. Cooperative Societies Rules, M.P. 1962, Rule 75 - *Valid service of notice - Process server affixed the notice on the office of the Society despite no order in that regard - Held - Process server was not authorized to decide to serve the notice by affixure - Before affixure of the notice, he ought to have obtained an order from the Dy. Registrar - Not valid service of notice.* (Para 17)

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खा. सहकारी सोसाइटी नियम, म.प्र. 1962, नियम 75 - सूचना पत्र की विधिमान्यतामील - आदेशिका तामीलकर्ता ने सोसाइटी के कार्यालय पर सूचना पत्र चस्पा किया यद्यपि उस सम्बन्ध में कोई आदेश नहीं था - अभिनिर्धारित - आदेशिका तामीलकर्ता चस्पा द्वारा सूचना पत्र की तामील करने का निर्णय लेने के लिए प्राधिकृत नहीं था - सूचना पत्र चस्पा करने से पूर्व उसे उप-पंजीयक से आदेश अभिप्राप्त करना चाहिए था - सूचना पत्र की तामील विधिमान्य नहीं।

C. Cooperative Societies Rules, M.P. 1962, Rule 75 - Service of notice by affixure - How affected - Dy. Registrar, after recording due satisfaction that the modes enumerated in clauses (a), (b) & (c) of sub-rule (3) were not available and only mode was available by affixure of service - Then on specific order, service of notice by affixure can be affected. (Para 17)

ग. सहकारी सोसाइटी नियम, म.प्र. 1962, नियम 75 - चस्पा द्वारा सूचना पत्र की तामील - कैसे प्रभावशील की जाएगी - उप-पंजीयक यह सम्यक् समाधान अभिलिखित करने के बाद कि उप-नियम (3) के खण्ड (ए), (बी) और (सी) में वर्णित विधियाँ उपलब्ध नहीं थीं और चस्पा करके तामील करने की एकमात्र विधि उपलब्ध थी - तब विनिर्दिष्ट आदेश पर चस्पा द्वारा सूचना पत्र की तामील प्रभावशील की जा सकती है।

Cases referred :

AIR 2002 SC 2370.

Vinod Kumar Mishra, for the petitioner.

Deepak Awasthy, G.A., for the respondent No.1.

Vipin Yadav, for the respondent No.2.

ORDER

This petition is directed against an order dated 25.11.2008 passed by the M.P. State Cooperative Tribunal, Bhopal in Second Appeal No.82/08, Annexure P/1, by which the second appeal preferred by the petitioner against the order of the Joint Registrar, Cooperative Society, Bhopal in First Appeal No.78-107/07 dated 14.2.2008 was dismissed.

2. To proceed in the case, it would be appropriate to state some facts of the case.

3. Petitioner is a Co-operative Society registered under the provisions of the M.P. Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act'). A show cause notice was issued to the petitioner to show cause why petitioner society be not wound up. Initially, aforesaid notice was issued by registered A.D. mode which remained unserved and the registered envelope returned back to the Registrar with an endorsement that the office of the petitioner society was found closed and notice could not be served. Thereafter, on 29.8.2007, the Deputy Registrar directed for issuance of the fresh notice. Aforesaid notice was sent through process-server who found that the office of the petitioner society was closed; so notice was affixed on the office of the petitioner society. Thereafter, the matter was proceeded exparte. On 29.9.2007, the Deputy Registrar found

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that no reply of show cause notice was filed, so aforesaid allegations may be treated as admitted. Petitioner society was not working in the interest of the members of the society and under section 69 of the Act, the society be wound up and Shri Sudhakar Pandey, respondent No.2 was appointed as Liquidator of the society.

4. An order Annexure P/2 was served on the petitioner society. Against this order, petitioner herein filed a first appeal before the Joint Registrar, Cooperative Society which was registered as First Appeal No.78-107/07 and by order Annexure P/4 dated 14.2.2008, first appeal was dismissed. Against order Annexure P/4, the petitioner filed second appeal before the M.P. State Cooperative Tribunal, Bhopal which was registered as Second Appeal No.82/08 and vide impugned order dated 25.11.2008, this appeal was dismissed.

5. Before the Tribunal, petitioner raised following contentions:-

That, no notice was served on the petitioner society as required under section 69 of the Act and in absence of which, such penal order ought not to have been passed against the petitioner society.

6. The Tribunal found that the registered notice was tried to be served on the petitioner society, but because the office of the petitioner society was closed, so subsequent notice was affixed on the office of the petitioner society and the provisions of Order 5 rule 20 CPC are applicable in the matter. As ordinary service was not possible, so the substituted service by affixture was effected and the petitioner was rightly proceeded exparte.

7. This order is under challenge in this petition.

8. Learned counsel for petitioner submitted:-

(a) That there was no proper service to the petitioner and before passing an order under section 69 of the Act, a due opportunity of hearing ought to have been extended to the petitioner to defend its case before the Deputy Registrar.

(b) That, procedure for service of notice is envisaged under Rule 75 of the M.P. Cooperative Societies Rules, 1962 (hereinafter referred to as 'the Rules') which provides mode of service of summons, but the procedure envisaged in sub-rule (3) of rule 75 of the Rules was not followed. Aforesaid provision specifically provides that the notice may be affected by giving or tendering it in person; or if such person is not found, by leaving it at his last known place of abode, or business or by giving or tending it to some adult member of his family; or if the address of such person is known to the Registrar or other authorised person, by sending it to him by registered post with acknowledgment due; or if none of

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the means aforesaid is available, by affixing it in some conspicuous part of his last known place of abode or business. But the Deputy Registrar has not followed the aforesaid procedure as envisaged under rule 75, so the Tribunal, the Joint Registrar and the Deputy Registrar erred in treating the aforesaid service as valid.

(c) It is further submitted by Shri Mishra that there was no order of the Deputy Registrar for affecting the service by affixture in some conspicuous part of last known place of abode or business. So no notice could have been affixed in the office of the petitioner society.

9. Shri Deepak Awasthy, learned Government Advocate supported the order who submitted that the procedure as envisaged under rule 75 was followed and after service of due notice to the petitioner society by affixture, the order was passed.

10. Shri Vipin Yadav, learned counsel for respondent No.2 also supported the action in the matter. He submitted that there were serious allegations against the petitioner society and the President of the Society, who sold the property for personal gain and looking to the allegations against the petitioner society, the order was rightly passed.

11. In this case, the sole question for consideration by this Court is whether the service affected on the petitioner society was in accordance with the rules or not.

Section 69(3) of the Act reads thus:-

69(3) No order under sub-section (1) or sub-section (2) shall be passed unless the society concerned has been given a reasonable opportunity of showing cause against the proposed order and representation, if any made by it is considered."

12. Section 69(3) of the Act provides that no order under sub-section (1) or sub-section (2) for winding up of the society shall be passed unless the society has been given a reasonable opportunity of showing cause against the proposed order and representation, if any made by it is considered. Meaning thereby that before passing an order of winding up the society under sub-section (1) or (2) of Section 69 of the Act, it was mandatory on the part of the Registrar to issue a show cause notice.

13. Rule 75 of the Rules provides mode of service of summons. For ready reference, sub-rule (3) of rule 75 is quoted which reads as under:-

(3) The service of summons under the Act or these rules on any person, may be affected in any of the following ways:-

(a) by giving or tendering it in person; or

(b) if such person is not found, by leaving it at his last known

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place of abode, or business or by giving or tending it to some adult member of his family; or

- (c) if the address of such person is known to the Registrar or other authorised person, by sending it to him by registered post with acknowledgment due; or
- (d) if none of the means aforesaid is available, by affixing it in some conspicuous part of his last known place of abode or business, or at some place of public resort, in such place. (emphasis supplied)

14. Sub-rule (3) provides that a notice is to be affected in any of the following ways; by giving or tendering it in person or if such person is not found, by leaving it at his last known place of abode, or business or by giving or tending it to some adult member of his family or if the address of such person is known to the Registrar or other authorised person, by sending it to him by registered post with acknowledgment due. Sub-rule (3) further provides that if none of the means aforesaid is available, then notice could be served by affixing it in some conspicuous part of the last known place of abode or business.

15. In this case, order-sheets of the Deputy Registrar in the proceedings under Section 69 of the Act are on record as Annexure R/2. The order-sheets relevant for the purpose of decision of this case are at page 16. On 27.7.2007, it was decided by the Deputy Registrar to issue a show cause notice for winding up the petitioner society. Accordingly, a show cause notice was prepared and was placed before the Deputy Registrar for signature. On 7.8.2007, the Deputy Registrar directed that the notice be issued for 21.8.2007 and signed the notice. On 21.8.2007, the notice was not returned served or unserved. The Deputy Registrar directed that the acknowledgement be awaited and after receiving the acknowledgement, the case be placed before him.

16. On 29.8.2007, it was recorded that the registered notice sent to the petitioner society was returned with an endorsement that at the time of the distribution of the registered notice, the addressee was not found. On the aforesaid date, the Deputy Registrar directed that the notice be served in the office and the case was fixed for 12.9.2007. On 12.9.2007, it was recorded that for service, one Shivnarayan Khare was authorised. He intimated the office that in spite of his various visits to the office of the society, nobody could be contacted, so he affixed the notice at the office of the society. The order-sheet further reveals that on the fixed date, on 12.9.2007, nobody appears for the society and the matter was sent to the Deputy Registrar for orders. Thereafter on 29.9.2007, the impugned order was passed.

17. Rule 75 of the Rules specifically provides that at the first instance, notice shall be issued for service in person or notice can be issued in the manner as provided in clauses (b) or (c). However, in the case, the notice was issued by

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registered post to the petitioner society which was returned unserved. When the notice issued by the registered post was not served on the petitioner society, the Deputy Registrar before issuance of the another notice ought to have specifically directed the process-server that in case of non-availability of the petitioner or its authorised person for receiving the notice or in case of finding the office closed, then the notice could be affixed in some conspicuous place of business and before recording such finding, he ought to have recorded a specific finding that modes for service as enumerated in clauses (a), (b) and (c) of sub-rule (3) were not available, only then such recourse could have been adopted by the Deputy Registrar. But from the perusal of the order-sheets Annexure R/2, we do not find that before affixture of the notice at the office of the petitioner society, the Deputy Registrar passed such an order. In absence of any specific order in this regard, the process server was not authorised to decide to serve the notice by affixture. Before affixture of the notice, he ought to have obtained an order from the Deputy Registrar and on a specific order of the Deputy Registrar, he was entitled to serve the notice by affixture. But in this case in absence of any order by the Deputy Registrar after recording due satisfaction that the modes enumerated in clauses (a), (b), (c) of sub-rule (3) were not available and only mode was available by affixture of service, notice served on the petitioner society by affixture was not valid.

18. An order of winding up of a society is penal in nature having civil consequences. Before taking such an action, principles of natural justice ought to have been followed. The legislation in its wisdom has provided a specific procedure for service of summons which ought to have been followed by the Deputy Registrar. By not serving the society in accordance with the procedure, a serious prejudice has been caused to the society, who has suffered an order of winding up.

19. Petitioner herein has placed reliance to a judgment of the Apex Court in *Sushil Kumar Sabharwal Vs. Gurpreet Singh* AIR 2002 SC 2370 and submitted that process-server before affixture of the summons had not tried to serve the summons to the addressee and there is no material on record showing that in fact any effort was made by the process-server for service of summon to the addressee and only thereafter, the notice could have been served by affixture. The copy of notice issued to the petitioner herein is not on record to verify the aforesaid fact but from the perusal of the order passed by the Deputy Registrar, it does not reveal whether any such effort was made by the process-server before affixing the notice at the office of the petitioner society. As aforesaid copy of notice is not on record, the contention made by the petitioner on the basis of *Sushil Kumar Sabharwal* (supra) cannot be decided. Apart from this, special procedure under rule 75 is provided in the Rules, so it is not necessary for this Court to consider the provision of Order 5 rule 20 CPC in the case and this case is decided on the basis of non-compliance of rule 75 of the Rules which provides complete procedure for service of summons under the Act.

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20. In view of the aforesaid, we find that notice was not served to the petitioner society in accordance with rule 75 of the Rules and the entire proceedings thereafter are bad in law and accordingly, we set aside the impugned orders Annexure P/2, Annexure P/4 and Annexure P/1 passed by the Deputy Registrar, the Joint Registrar and the M.P. State Co-operative Tribunal, Bhopal and remand the matter to the Deputy Registrar to extend an opportunity of hearing to the petitioner society to show cause.

21. As show-cause notice has already been placed on record, so the petitioner on the basis of show cause notice shall submit a reply to the Deputy Registrar, Co-operative Societies, Bhopal within a period of 30 days from today and after filing of the reply, the Deputy Registrar, Co-operative Societies, Bhopal shall proceed in the matter in accordance with law.

22. The parties present herein are directed to remain present before the Deputy Registrar, Co-operative Societies, Bhopal on 8.3.2010 for which date no fresh notice shall be necessary to the parties. The Deputy Registrar, Co-operative Societies, Bhopal shall restore the file and decide the matter after extending due opportunity of hearing, in accordance with law, expeditiously as far as possible within a period of three months from the aforesaid date. As order of winding up passed by the Deputy Registrar has been set aside, the petitioner society shall be entitled to function, but the society shall not be entitled to sell, mortgage or alienate any property of the society. The President of the society shall not be entitled to deal with the funds/finances of the society or create any third party interest in the property of the society, till the decision by the Deputy Registrar.

23. No order as to costs.

C.C. as per rules.

Order accordingly.

I.L.R. [2010] M. P., 918

WRIT PETITION

Before Mr. Justice R.S. Garg & Mr. Justice K.S. Chauhan

2 February, 2010*

KOTAK MAHINDRA BANK LTD.

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

A. Vaniyik Kar Adhiniyam, M.P. 1994 (5 of 1995), Section 53 - S. 53 creates a statutory first charge which prevails over any charge on the property - Words "subject to provisions of Section 530 of the Companies Act" mean that remainder property shall be distributed in accordance with S. 530 of Companies Act - S. 530 of Companies Act is to be read in addendum

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of S. 53 of Adhiniyam 1994 - Section 53 of Adhiniyam 1994 not ultra vires - Petition dismissed. (Para 11)

क. वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), धारा 53 - धारा 53 कानूनी प्रथम बार सृष्ट करती है जो सम्पत्ति पर अन्य किसी बार पर अभिभावी होता है - "कम्पनी अधिनियम की धारा 530 के उपबंधों के अध्यक्षीन" शब्द का अर्थ है कि शेष सम्पत्ति कम्पनी अधिनियम की धारा 530 के अनुसार वितरित की जायेगी - कम्पनी अधिनियम की धारा 530 को अधिनियम 1994 की धारा 53 के अनुशेष के रूप में पढ़ा जाना चाहिए - अधिनियम 1994 की धारा 53 अधिकारातीत नहीं - याचिका खारिज।

B. Vanijyik Kar Adhiniyam, M.P. 1994 (5 of 1995), Section 51 - Transfer to defraud revenue void - Provision provides protection to creditors in whose favour the property has been alienated or in whose favour charges over property has been created - Section not ultra vires - Petition dismissed. (Paras 14 & 15)

ख. वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), धारा 51 - राजस्व से कपट-वंचित करने के लिए किया गया अंतरण शून्य - उपबंध उन लेनदारों के लिए संरक्षण का उपबंध करता है जिसके पक्ष में सम्पत्ति अन्यसंक्रामण की गयी है या जिसके पक्ष में सम्पत्ति पर भार सृष्ट किया गया है - धारा अधिकारातीत नहीं - याचिका खारिज।

Cases referred :

(2002) 10 SCC 441.

Rajesh Maindiretta, for the petitioner.

Rahul Jain, Dy.A.G., for the State.

J U D G M E N T

The Judgment of the Court was delivered by **R.S. GARG, J.** :- This order shall dispose of Writ Petition No.394/2004, Writ Petition No.30/2005, Writ Petition No.2377/2006, Writ Petition No.14453/2006, Writ Petition No.17965/2006, Writ Petition No.3770/2007 & Writ Petition No. 4315/2007 as different petitioners are challenging constitutional validity of Section 53 of Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 on the grounds which we shall refer hereinafter.

2. Each of the petitioner is a registered nationalized bank and has extended some loans to some of the companies/private entrepreneurs. They are aggrieved of Section 53 of Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (hereinafter referred to as the "1994 Adhiniyam") on the ground that the State Government has no legislative competence to enact an Act or a provision of law which puts secured creditors and unsecured creditors at different level though each of the creditor had extended loan to the tax defaulters. It is submitted that from the very language of Section 53 of 1994 Adhiniyam, it would clearly appear that subject to the provisions of Section 530 of the Companies Act, 1956 (No.1 of 1956) (hereinafter referred to as the "Companies Act"), secured creditors only are

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protected while unsecured creditors, private creditors, banks or such other authorities are not entitled to have better claim in comparison to the tax which under Section 53 of the 1994 Adhiniyam would be the first charge.

3. Shri Rahul Jain, learned Deputy Advocate General for the State submits that 1994 Adhiniyam has replaced Madhya Pradesh General Sales Tax Act, 1958 (2 of 1959) (hereinafter referred to as the "1958 Act") which had a pari materia provision contained in Section 33-C of 1958 Act and has been held to be a valid piece of legislation, therefore, the petitioners are not entitled to maintain these petitions. It is also submitted that distinction pointed out by learned counsel for the petitioners in the language of Section 33-C of 1958 Act and Section 53 of 1994 Adhiniyam would show that the secured creditors who were otherwise not entitled to claim any charge over the tax recovery now have been saved to some extent under Section 53 of the 1994 Adhiniyam.

4. It is also submitted that provisions contained in Section 53 of 1994 Adhiniyam are to be read in juxtaposition with Section 530 of the Companies Act and assuming the words "subject to the provisions of Section 530 of the Companies Act, 1956 (No.1 of 1956)" are deleted from Section 53 of the 1994 Adhiniyam then language of Section 53 would be pari materia to Section 33-C of 1958 Act and as the said Section 33-C of 1958 Act has been held to be a valid piece of legislation, the petitions deserve to be dismissed.

5. For proper appreciation of the controversy between the parties, it is necessary to refer to Section 33-C of 1958 Act:-

"33-C. Tax to be first charge.—Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax and/or penalty, if any, payable by a dealer or other person under this Act shall be a first charge on the property of the dealer or such person."

6. Section 53 of the 1994 Adhiniyam reads as under:-

"53. Tax to be first charge.—Notwithstanding anything to the contrary contained in any law for the time being in force and subject to the provisions of Section 530 of the Companies Act, 1956 (No.1 of 1956) any amount of tax, and/or penalty or interest, if any, payable by a dealer or other person under this Act shall be first charge on the property of the dealer or such person."

7. A comparison of Section 33-C of 1958 Act and Section 53 of 1994 Adhiniyam would make it clear that Section 33-C of 1958 Act left no reservation in favour of the secured or unsecured creditors. Section 33-C of 1958 Act has been held to be intra-vires in the matter of *State of MP & another Vs. State Bank of Indore & others*, (2002) 10 SCC 441. In the said matter the Division Bench of the High Court of Madhya Pradesh held that Section 33-C of 1958 Act was *ultra-vires* the

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constitution but however the Supreme Court observed that Section 33-C created a statutory first charge which prevails over any charge that was in existence. The Supreme Court was of the opinion that the charge created under Section 33-C in favour of the State in respect of the sales tax dues was valid because there was no question of retrospectivity. The Supreme Court observed that Section 33-C was a valid piece of legislation.

8. Considering the said position, Shri Rajesh Maindiretta, learned counsel for the petitioners submitted that a perusal of Section 53 of 1994 Adhiniyam makes it clear that the reservation in favour of the secured creditors would be ultra vires the constitution because Section 53 does not protect the unsecured creditors.

9. For proper appreciation of this argument, Section 530 of the Companies Act, 1956 is required to be appreciated. It would also be beneficial to refer to Section 529-A of the 1956 Act, which reads as under:

“529-A. Overriding preferential payments.—(1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company—

(a) workmen's dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of Section 529 pari passu with such dues.

shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.”

10. From a perusal of Section 529-A of 1956 Act which refers to overriding preferential payments in case of winding up of a company, it would appear that notwithstanding anything contained in any other provision of Companies Act or any other law for the time being in force, in the winding up of a company, workmen's due and debts due to secured creditors subject to certain conditions shall be paid in priority to all other debts. After making such payment, if any property is yet left, then Section 530 of the Companies Act, 1956 shall come into operation, which reads as under:-

“530. Preferential payments.—(1) In a winding up, [subject to the provisions of Section 529A, there shall be paid] in priority to all other debts—

(a) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having

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become due and payable within the twelve months next before that date;

(b) all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date [* * * *] subject to the limit specified in sub-section (2);

(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order of resolution;

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act, 1948, or any other law for the time being in force;

(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in Section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death of disablement of any employees of the company;

(f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by the company; and

(g) the expenses of any investigation held in pursuance of Section 235 or 237, in so far as they are payable by the company."

11. A bare reading and understanding of Section 530 of the Companies Act would clearly provide that subject to Section 529-A there shall be paid in priority to all other debts, all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority etc. Section 530 of the Companies Act would come into operation only after anything is left after satisfying the workmen's dues and debts due to the secured creditors. When Section 33-C of 1958 Act was in force as a valid piece of legislation even the secured creditors under Section 529-A or other creditors under Section 530 were not entitled to any

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preferential payments. Section 529-A of the Companies Act provides that in the matter of winding up of a company a particular mode is to be adopted. However, Section 530 of the Companies Act provides that the remainder is to be distributed in a particular manner. The words "and subject to the provisions of Section 530 of the Companies Act, 1956" are to be understood in their true perspective to mean that the property shall be distributed in accordance with Section 530 of the Companies Act. If Section 33-C of 1958 Act is held to be a valid piece of legislation, then mode of the distribution as provided under Section 530 of the Companies Act cannot be held to be ultra vires the constitution because Section 530 of the Companies Act provides for distribution of assets of a company and by force of incorporation, the said provisions contained in Section 530 of the Companies Act will have to be read in addendum to Section 53 of 1994 Act. For the reasons aforesaid, we are unable to hold that Section 53 of 1994 Adhiniyam is ultra vires the Constitution.

12. It was then contended that Section 51 of 1994 Adhiniyam is also ultra vires the constitution because the authority is given to the State Government or Recovery Officers to hold that during the pendency of any proceeding under 1994 Act, they can declare any transfer or charge to be a fraudulent transfer and thereby cause serious prejudice to any creditor who has extended loan facility or has purchased property or has taken the property under mortgage, gift, exchange etc.

13. Section 51 of the 1994 Act reads as under:-

"51. Transfer to defraud revenue void.—Where during the pendency of any proceeding under this Act or under the Act repealed by this Act or under the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959) any dealer creates a charge on or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of any of his assets in favour of any other person with the intention to defraud revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the dealer as a result of the completion of such proceeding under this Act or in pursuance of such proceeding under the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959).

Provided that such charge or transfer shall not be void if made by the transferor and the transferee for valuable consideration under this Act or the Act repealed by this Act or the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959)."

14. If language of the Act is properly read and appreciated, it would mean that where during the pendency of any proceeding under the Act or under the Repealed Act, 1958 Act or under the Madhya Pradesh Land Revenue Code 1959, any dealer

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creates a charge on or parts with the possession, of his property with the intention to defraud revenue, such charge or transfer shall be void as against any claim in respect of any tax etc. When some property is transferred/alienated or charge is created over it then unless otherwise proved a transfer would be held valid and binding on the parties. If the State Government is of the opinion that such alienation or creation of charge was to defraud revenue or was with an intention to defraud revenue then the competent officers of the State Government/Revenue Recovery Officers will have to make an enquiry into the subject after issuing notice to the transferor, transferee and/or the person who created the charge and the persons in whose favour the charge is created and after giving appropriate opportunities to all the parties it has come to the conclusion that transfer was with or without an intention to defraud the revenue.

15. It would be trite to say that a simple word or a simple finding without any supporting evidence or foundational fact that creation of charge/allegation was with an intention to defraud revenue would not be sufficient. When somebody alleges fraud, it has to plead the requirement and they will have to prove that how the fraud was committed and how the said fraud was against the interest of the revenue and was with an intention to defraud the revenue. In our opinion, Section 51 of 1994 Adhiniyam in fact provides protection to the creditors in whose favour the property has been alienated by any mode i.e mortgage, gift, exchange etc. or in whose favour charge over the property has been created.

16. Taking into consideration the totality of circumstances, we are unable to hold that Sections 53 and 51 of the Adhiniyam are ultra vires the constitution. All the petitions deserve to and are accordingly dismissed. There shall be no order as to cost.

Petition dismissed.

I.L.R. [2010] M. P., 924

APPELLATE CIVIL

Before Mr. Justice Prakash Shrivastava

27 November, 2009*

STATE BANK OF INDIA

... Appellant

Vs.

BANK OF IRELAND & ors.

... Respondents

A. Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 - Anti-suit injunction - Powers of Indian Courts - In appropriate case, Courts in India have power to issue anti-suit injunction to a party over whom it has personal jurisdiction - The anti-suit injunction though directed against a person, in effect causes interference in the exercise of jurisdiction by another

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Court - Therefore, this power should be exercised sparingly with due regard to the rule of comity i.e. respect for the other Courts' jurisdiction. (Para 9)

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 – वाद-निरोध व्यादेश – भारतीय न्यायालयों की शक्तियाँ – समुचित मामले में, भारत के न्यायालयों को उस पक्षकार को वाद-निरोध व्यादेश जारी करने की शक्ति है जिस पर वह वैयक्तिक अधिकारिता रखता है – वाद-निरोध व्यादेश यद्यपि किसी व्यक्ति के विरुद्ध निदिष्ट होता है, वस्तुतः वह किसी अन्य न्यायालय द्वारा अधिकारिता के प्रयोग में हस्तक्षेप कारित करता है – इसलिए इस शक्ति का प्रयोग कभी-कभी सौहार्द के नियम अर्थात् अन्य न्यायालयों की अधिकारिता के आदर का सम्यक् ध्यान रखते हुए करना चाहिए।

B. Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 - Anti-suit injunction - Governing principles - Principles governing grant of injunction apply in respect of grant of anti-suit injunction since it is a species of injunction. (Para 9)

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 – वाद-निरोध व्यादेश – शासी सिद्धांत – व्यादेश प्रदान करने के शासी सिद्धांत वाद-निरोध व्यादेश प्रदान करने के सम्बन्ध में भी लागू होते हैं क्योंकि यह व्यादेश की एक प्रजाति है।

C. Civil Procedure Code (5 of 1908), Order 6 Rule 4 - Pleadings - Burden of proof - The burden of establishing that the forum of choice is a forum non-convenience or the proceedings therein are oppressive or vexatious would be on the party so contending to aver and prove the same. (Para 10)

ग. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 4 – अभिवचन – सबूत का भार – यह साबित करने का भार कि पसंद का न्यायालय असुविधा का न्यायालय है या उसकी कार्यवाहियाँ पीड़ा पहुँचाने वाली या तंग करने वाली हैं, उस पक्षकार पर होगा जो ऐसा प्रतिवाद करते हुए प्रकथन करता है और उसे साबित करता है।

Cases referred :

(2003) 4 SCC 341, 1994 ILR Karnataka 1370, (1981) 2 SCC 766, AIR 2007 SC 2798, Law Report Files January 2004 Supreme Court State of New York, 2008(2) Bombay CR 681, 1994(2) QB (Com. City)-87, 1990 (Supp) SCC 727.

Vivek Tankha with N.M. Sharma, Vivek Sharan & V.P. Khare, for the appellant.

Pravin Samdani with R.T. Thanewala, for the respondent No.1.

None, for the other respondents.

ORDER

PRAKASH SHRIVASTAVA, J. :- THIS Misc. Appeal under Section 104 read with Order XLIII Rule 1A of the Code of Civil Procedure [“Code” hereafter] has been filed against the order dated 13th March, 2009 passed by the Court of Thirteenth Additional District Judge, Indore in Civil Suit No.1-A/2009 rejecting the application under Order XXXIX Rule 1 & 2 of the Code filed by the appellant.

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2. The appellant has filed Civil Suit No.1-A/2009 for declaration and permanent injunction pleading that the appellant – State Bank of India at the request of Respondent No.2 – Soni Ispat Ltd. had opened a letter of credit (LC) in favour of Respondent No.3 – M/s European Metal Recycling Ltd., United Kingdom bearing No.09632081M0000201 on 05.09.2008 with the date of expiry being 05.11.2008. The Respondent No.1 – Bank of Ireland is negotiating and confirming Bank. The tenor of the letter of credit was specified as 180 days from the date of Bill of lading. The Respondent No.1 – Bank negotiated the documents (three bills) under the subject letter of credit on 24.10.2008, 28.10.2008 and 31.10.2008 respectively. The total amount of the bills negotiated under the LC was Rs.2,30,47,711.50 (USD460957.23 @ Rs.50 per USD). The Respondent No.1 under the said LC forwarded three sets of documents to the appellant and the appellant had found various discrepancies in the documents as they were not found in strict conformity with the conditions of LC. A protracted correspondence took place between the appellant and the Respondent No.1 in which allegedly the Respondent No.1 had admitted its mistake and the appellant returned the original documents to the Respondent No.1 on 29.12.2008. The appellant apprehended that the Respondent No.1 will file a suit in England, therefore, it filed the present suit before the Court of Additional District Judge, Indore seeking permanent injunction to restrain the Respondents No.1 and 3 from initiating and/or prosecuting proceeding before the Court in England or in any other Foreign Court with regard to the issue in question and also further relief of declaration that the documents negotiated under the LC in question were discrepant and did not satisfy the test of complying presentation.

3. The suit was opposed by the Respondent No.1 by filing the written-statement and raising the plea that the Respondent No.1 – Bank is involved in the case as “confirming bank” of an irrevocable LC which was issued by the appellant. The purpose of LC was to pay for goods shipped by the Respondent No.3 (Seller) to Respondent No.2 (Buyer). The goods in question were shredded scrap iron & steel. Three shipments were made by the Respondent No.3 against which payment was sought from the Respondent No.1 Bank as confirming bank. The Respondent No.1 received the documents required by LC from the Seller in relation to three shipments and found them to conform with the requirements of LC and made payment to the Seller in respect of three shipments. The Respondent No.1 then sent the original documents to the appellant's Branch at Indore on 24th October, 2008; 28th October, 2008; and 31st October, 2008 respectively to seek reimbursement of the amounts paid to the Seller but the appellant rejected the documents claiming that they were discrepant and refused to reimburse the Respondent No.1. The Respondent No.1 pleaded that Courts in UK have adequate jurisdiction in respect of the subject matter since the appellant is carrying on business in UK and subject matter of the dispute falls under the jurisdiction of the UK Courts. Respondent No.1 also pleaded that nothing in the written-statement should

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be taken as a submission to jurisdiction by Respondent No.1 and it reserves the right to challenge the jurisdiction of the Indian Courts.

4. The appellant had also filed an application under Order XXXIX Rule 1, 2 & 3 read with Section 151 of the Code seeking a temporary injunction to restrain the Respondents No.1 and 3 from initiating or prosecuting proceedings in any manner before the Court at England or in any other Foreign Court in respect of the LC in question. The application was opposed by the Respondent No.1 by raising the plea that neither the appellant has prima-facie case nor balance of convenience is in its favour and no irreparable injury will be caused and further that the UK Court has jurisdiction and the Respondent No.1 has right to initiate proceedings in UK Court.

5. The Trial Court by order dated 13th March, 2009 after appreciating the arguments advanced by counsel for both the parties rejected the application under Order XXXIX Rule 1 & 2 of the Code filed by the appellant, against which the present appeal has been filed.

6. Learned counsel appearing for the appellant submitted that by filing the written-statement the Respondent No.1 has accepted the jurisdiction of the Indian Courts and that the appellant has prima-facie case in his favour since the discrepancies in the documents have been admitted. He further submitted that the Indian Court is the forum of conveniens to the appellant and the UK Court is a forum of non-conveniens and the proceedings if initiated before the UK Court will be oppressive and vexatious, therefore, interim injunction be granted to the appellant. He further submitted that the Trial Court committed an error in examining the issue of fraud while deciding the interim-injunction application. In support of his submission, learned counsel appearing for the appellant relied upon the decisions in the matter of *Modi Entertainment Network and another v/s W.S.G. Cricket Pte. Ltd.*, reported in (2003) 4 SCC 341; in the matter of *Air Bus Industries v/s Laura Howell Linton*, reported in (1994) ILR Karnataka. 1370; in the matter of *United Commercial Bank v/s Bank of India and others*, reported in (1981) 2 SCC 766; in the matter of *Himadri Chemicals Industries Ltd. v/s Coal Tar Refining Company*, reported in AIR 2007 SC 2798; and in the matter of *Shin-Etsu Chemical Co., Inc. v/s United Bank Limited*, reported in Law Report Files January 2004 Supreme Court of the State of New York.

7. As against this, learned counsel appearing for the Respondent No.1 submitted that in terms of the clauses of the letter of credit and the Uniform Customs and Practice (UCP 600), the Respondent No.1 has right to file suit in UK. He submitted that no error has been committed by the Trial court in rejecting the application under Order XXXIX Rule 1 & 2 of the Code as the appellant could not establish prima-facie case; balance of convenience or irreparable injury. He further submitted that the Trial Court has examined the issue of fraud since it was

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argued by the appellant. In support of his submissions, he placed reliance upon the decision of the Supreme Court in the matter of *Modi Entertainment Network and another v/s W.S.G. Cricket Pte. Ltd.*, reported in (2003) 4 SCC 341; in the matter of *Shree Precoated Steels Limited v/s Macsteel International Far East Ltd. & another*, reported in 2008 (2) Bom. C.R. 681; and in the matter of *The Bank of Baroda v/s The Vysya Bank Ltd.*, reported in (1994) Vol.2 Q.B. (Com. Ct.) 87.

8. I have heard learned counsel for the parties at length and perused the record.

9. It is the settled position in law that the Courts in India have power to issue anti-suit injunction to a party over whom it has personal jurisdiction, in an appropriate case and the principles governing grant of injunction apply in respect of grant of anti-suit injunction since it is a species of injunction. The anti-suit injunction though directed against a person, in effect causes interference in the exercise of jurisdiction by another Court, therefore, this power should be exercised sparingly with due regard to the rule of comity i.e. respect for the other Courts jurisdiction.

10. The Supreme Court in the matter of *Modi Entertainment Network and another* (Supra), after considering the earlier judgments of the Supreme Court has formulated the following principles required to be followed while exercising discretion to grant anti-suit injunction :-

“24. From the above discussion, the following principles emerges :-

(1) In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects :-

(a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;

(b) if the injunction is declined, the ends of justice will be defeated and injustice will be perpetuated; and

(c) the principle of comity – respect for the court in which the commencement or continuance of action/ proceeding is sought to be restrained – must be borne in mind.

(2) In a case where more forums than one are available, the court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (forum conveniens) having regard to the convenience of the parties and may grant anti-suit injunction in regard to proceedings which are oppressive or vexatious or in a forum non-conveniens.

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

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(6) xxx xxx xxx

(7) The burden of establishing that the forum of choice is a forum non-conveniens or the proceedings therein are oppressive or vexatious would be on the party so contending to aver and prove the same."

11. The principles Nos.(3), (4), (5) and (6) formulated by the Supreme Court are not relevant for the present purpose since they relate to the contract having the jurisdiction clause or agreed jurisdiction which is not there in the present case.

12. The present case needs to be examined in the light of the principles which have been laid down in *Modi Entertainment Network and another* (Supra).

13. The Respondent No.1 while filing the written-statement in the suit has reserved its right to challenge the jurisdiction of the Indian Court. The said issue will be examined on merit by the Trial Court if raised and contested by the parties. Therefore, presently I proceed on the basis that the Respondent No.1 is amenable to personal jurisdiction of Indian Courts. But that alone is not enough to grant anti-suit injunction.

14. For obtaining anti-suit injunction, the appellant is also required to establish that for the ends of justice it is necessary to grant injunction. As per the pleading contained in the written-statement, the Respondent No.1 has made payment to Respondent No.2 on the basis of documents as required by LC and submitted by Respondent No.2. Suit, if any, will be filed by the Respondent No.1 inter alia, seeking reimbursement of amount from the appellant.

15. A perusal of the letter of credit in question shows that the letter of credit was issued by the State Bank of India, Commercial Branch, Indore and the receiver's address was shown as State Bank of India London. The Respondent No.2 is the applicant and Respondent No.3 is the beneficiary. The UK address of the Respondent No.3 is given in the letter of credit. In terms of clause 41D, the LC could be negotiated by beneficiary with any Bank in UK. According to the appellant the discrepancies in the documents were of such a nature that the amount under the LC could not be disbursed; whereas according to the Respondent No.1 the discrepancies were not of such a nature which could prevent the appellant from disbursing the amount. Article 7 (c) of UCP-600 provides for an undertaking of an issuing bank to reimburse a nominated bank that has honoured or negotiated a complying presentation and forwarded the documents to the issuing bank. An issuing bank's undertaking to reimburse a nominated bank is independent of the issuing bank's undertaking to the beneficiary. Article 8 mentions confirming bank undertaking to honour the LC and Article 14 (d) provides that data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit.

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16. The burden was on the appellant, who is seeking anti-suit injunction, to establish that if injunction is declined, the ends of justice will be defeated and injustice will be perpetuated but the appellant has failed to discharge the burden and has not been able to establish the aforementioned requirement.

17. It is worth noting that in the present case, the parties have not agreed to submit to the exclusive jurisdiction of any Court, therefore, the parties are entitled to approach the Court of available or natural jurisdiction in normal course. If both the Courts are Courts of natural jurisdiction, it is the choice of the party to approach a particular Court seeking the relief. The LC was issued by the appellant from India but the negotiating and confirming bank is in Northern Ireland. As per pleading contained in the written-statement, the original documents have been returned to Belfast in Northern Ireland. The factors connecting the case to Northern Ireland have been disclosed in the written-statement.

18. The appellant in the present case has failed to establish that the Court in UK is a forum of non-convenience to the appellant or if the proceedings are initiated in UK they will be oppressive or vexatious. Such a burden to aver and prove the same was on the appellant.

19. It is also worth noting that principles of comity i.e. respect for the Court in which commencement of proceedings is sought to be restrained, is also a relevant factor which is required to be borne in mind while considering the question of grant of anti-suit injunction. If the UK Court also has the jurisdiction, then the anti-suit injunction cannot be granted merely on asking. It is not a case falling in such rare category of cases where anti-suit injunction is required to be issued restraining the Respondent No.1 from initiating or continuing the proceedings in UK Court.

20. The Trial Court has appreciated the argument which was advanced by the appellant that the Respondent No.1 fraudulently did not send the correct documents as required by LC and has found such an allegation to be prima-facie incorrect. It has also noted the submission of the Respondent No.1 that in the meanwhile the price of the steel in the international market had fallen, therefore, the Respondent No.2 did not want to receive the steel in terms of the agreement and by pointing out the discrepancies in the documents, he filed the present suit in collusion with and through the appellant Bank. The plea of fraudulently preparing the documents was raised by the appellant, therefore, the Trial court has rightly examined the said plea and found that the appellant could not prove that deliberately incorrect documents were prepared to commit fraud. As per condition 53-A of LC, the payment was to be made in State Bank of India New York (USA). It also noted the appellant's admission that the appellant has its Bank, both in London and US.

21. It is also worth noting that the Trial Court has considered all the three relevant factors, i.e. prima-facie case, balance of convenience and irreparable injury which

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are required to be examined while granting or refusing temporary injunction and has reached to the conclusion that the appellant has failed to establish either of them.

22. The Trial Court while considering the issue of balance of convenience has found that the Respondent No.1 has to recover the amount of LC and grant of anti-suit injunction will affect the recovery and indirectly an injunction will be issued restraining the recovery. Therefore, balance of convenience is not in favour of the appellant. I do not find any flaw in such a reasoning of the Trial Court.

23. The Supreme court in the matter of *Wander Ltd. and another v/s Antox India P. Ltd.*, reported in 1990 (Supp) SCC 727, while exercising the issue of interference by the appellate Court in the order relating to grant of or refusal of temporary injunction by the Trial Court has held that the appellant Court should not substitute its own discretion when the discretion is not shown to have been exercised arbitrarily, capriciously, perversely or where the Court has not ignored the settled principles of law regulating grant or refusal of interlocutory injunction.

24. Learned counsel for the appellant has relied upon a judgment of Karnataka High Court in the matter of *Air Bus Industries* (Supra) but in that case since the strict product liability of Texas was different from concept of negligence and the action in India was beneficial to all concerned, therefore, the Karnataka High Court on the facts of that case had found that action in Texas to be not in natural forum and oppressive leading to injustice. But that is not the present case.

25. The appellant has also relied upon the judgment of the Supreme Court in the matter of *United Commercial Bank* (Supra), which relates to strict adherence to the terms of the credit letter. But such an issue will be considered at the time of the trial of the suit on merit. On the basis of the said judgment, it cannot be held that the appellant has proved the prima-facie case in his favour on the basis of the alleged plea of discrepancy in the documents. The appellant has also relied upon the judgment of the Supreme Court in the matter of *Himadri Chemicals Industries Ltd.* (Supra). This judgment relates to the principles which are required to be followed in the matter of injunction to restrain the encashment of a Bank Guarantee or a Letter of Credit. Fraud of an egregious nature and an irretrievable harm or injustice to one of the parties are the two exceptions when the Courts can grant an order of injunction in favour of an aggrieved party. But on the facts of the present case, the appellant has failed to prima-facie establish the two exceptions mentioned therein.

26. The reliance of the appellant in the matter of *Shin-Etsu Chemical Co., Inc.* (Supra) also does not help the appellant because the Supreme Court of the State of New York in that matter on the facts of that case held that the action should be adjudicated in Singapore, but the facts of the present case are different.

27. As against this, the Respondent No.1 has placed reliance upon the judgment

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of the Bombay High Court in the matter of *Shree Precoated Steels Limited* (Supra), in which it is held that the proper course in such a case is to adhere to the principle of comity and to allow the proceedings in each country to take their own course leaving the final decision in one country to have its effect on the proceedings in the other.

28. Learned counsel for the Respondent No.1 has also placed reliance upon the Queen's Bench Division (Commercial Court) judgment in the matter of *The Bank of Baroda* (Supra), wherein the Queen's Bench referring to the Articles of Rome Convention took the view that the English letter will be applicable to the contract between the parties and LC will be governed by the English letter but the counsel for the Respondent No.1 could not point out that the present contract is also governed by the Rome Convention.

29. The appellant could not establish the requirement of grant of anti-suit injunction which have been noted by the Supreme Court in the matter of *Modi Entertainment Network and another* (Supra), therefore, at this stage no anti-suit temporary injunction can be granted.

30. In view of the aforesaid analysis, I do not find any reason to interfere in the conclusion which has been arrived at by the Trial Court. The impugned order of the Trial Court refusing to grant anti-suit temporary injunction to the appellant and rejecting the application under Order XXXIX Rule 1 & 2 of the Code does not suffer from any error.

31. The appeal is accordingly dismissed. However, looking to the controversy involved, the Trial Court is directed to expedite the suit and decide it as expeditiously as possible, preferably within a period of nine months.

No order as to costs.

Appeal dismissed.

I.L.R. [2010] M. P., 932.

APPELLATE CIVIL

Before Mr. Justice Arun Mishra & Mr. Justice S.C. Sinho

8 December, 2009*

SHANTI RATHORE (SMT.)

... Appellant

Vs.

RADHESHYAM & anr.

... Respondents

A. Specific Relief Act (47 of 1963), Section 20 - *Suit for specific performance of contract to sell the land on the basis of an oral agreement and a receipt executed by defendant admitting agreement and receiving Rs. 7 lacs as part of consideration - Trial Court directing the refund of*

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consideration of Rs. 7 lacs along with interest - Appeal filed by defendant - Held - There was no reason due to strained relationship to rely upon the defendant for entering into the oral agreement to sell for the purpose of sale of property for consideration of Rs. 11,50,000 - Material contradiction in the version of plaintiff and his witnesses as to the payment of consideration of Rs. 7 lacs - There was overwriting and manipulations in the receipt - Receipt cannot be said to be reliable at all - Judgment & decree set-aside - Appeal allowed. (Paras 13 to 15)

क. विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 20 - भूमि विक्रय संविदा के विनिर्दिष्ट पालन के लिए वाद मौखिक करार और प्रतिवादी द्वारा निष्पादित रसीद, जिसमें करार और आंशिक प्रतिफल के रूप में 7 लाख रुपये प्राप्त करना स्वीकार किया गया, के आधार पर - विचारण न्यायालय ने 7 लाख रुपये प्रतिफल ब्याज सहित वापस करने का निदेश दिया - प्रतिवादी द्वारा अपील फाइल की गयी - अभिनिर्धारित - तनावपूर्ण सम्बन्धों के चलते 11,50,000 रुपये प्रतिफल में सम्पत्ति विक्रय का मौखिक करार करने के लिए प्रतिवादी पर विश्वास का कोई कारण नहीं था - 7 लाख रुपये प्रतिफल भुगतान करने के सम्बन्ध में वादी और उसके साक्षियों के बयानों में तात्त्विक विरोधाभास - रसीद में लिफाफेखन और हेर-फेर था - रसीद को किसी प्रकार से विश्वसनीय नहीं कहा जा सकता - निर्णय और डिक्री अपास्त - अपील मंजूर।

B. Evidence Act (1 of 1872), Section 45 - When expert's evidence not helpful - Plaintiff's prayer to appoint an expert for comparison of signature of defendant on receipt was disallowed by the trial Court - Held - There was so many material contradictions in the plaintiff's version and that of his witnesses - Receipt is so much manipulated one and its due execution by defendant has also not been proved - In these circumstances, the expert evidence would not have tilted the balance at all in favour of plaintiff. (Para 16)

ख. साक्ष्य अधिनियम (1872 का 1), धारा 45 - विशेषज्ञ की साक्ष्य कब सहायक नहीं - रसीद पर प्रतिवादी के हस्ताक्षर के मिलान के लिए विशेषज्ञ नियुक्त करने की वादी की प्रार्थना विचारण न्यायालय द्वारा नामंजूर की गई - अभिनिर्धारित - वादी और उसके साक्षियों के बयानों में बहुत ज्यादा तात्त्विक विरोधाभास था - रसीद में बहुत ज्यादा हेर-फेर था और प्रतिवादी द्वारा इसका सम्यक् निष्पादन किया जाना भी साबित नहीं किया गया - इन परिस्थितियों में विशेषज्ञ की साक्ष्य वादी के पक्ष में किसी भी प्रकार से सहायक नहीं हो सकती थी।

J.K. Verma, for the appellant.

A.D. Mishra, for the respondent No.1.

Harish Agnihotri, G.A., for the respondent No.2.

J U D G M E N T

The Judgment of the Court was delivered by **ARUN MISHRA, J.** :-The appeal has been preferred as against the judgment & decree dated 3.2.2007 passed by Shri Gulab Sharma, District Judge, Harda in civil suit no.4-A/05 decreeing the suit filed by plaintiff-respondent Radheshyam

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directing the refund of consideration of Rs.7 lacs along with interest @ 9% per annum from the date of filing of the suit.

2. The plaintiff averred that an oral agreement to sale was entered into by plaintiff Radheshyam with defendant Smt. Shanti Rathore. She is the widow and plaintiff used to help her. In the year 2002 the defendant expressed the desire to sell part of land owned by her at Mahendragaon. She wanted to sell 10 acres of agricultural land. The total consideration fixed was Rs.11,50,000/-.

3. The oral agreement was entered into on 26.5.2002. A sum of Rs.1,00,001/- was paid by the plaintiff to the defendant. The payment was made at village Mahendragaon. It was also agreed that amount was to be paid in installments and sum of Rs.7 lacs was paid in installments by 11.6.2002. Thus, total sum paid was Rs.8,00,001/-. On 11.6.2002 for satisfaction of plaintiff receipt was executed by defendant no.1, Smt. Shanti Rathore admitting that she had entered into an agreement for a sum of Rs.11 lacs 50 thousand and also admitted payment of Rs.7 lacs. On 15.7.2002 when plaintiff visited the defendant no.1 along with sum of Rs.2,75,000/- and asked her to execute the sale-deed, sum of Rs.75,000/- was to be paid at Harda at the time of registration of sale-deed. She stated that she did not desire to sell the land to plaintiff. Ultimately the sale-deed was not executed. Consequently, suit was filed for specific performance.

4. The defendant Smt. Shanti Rathore in the written statement denied the plaintiff's averments contending that she had not received any consideration of Rs.1 lac or Rs.7 lacs at any point of time. She has not executed any of the receipt evincing the payment of Rs.7 lacs. The said amount was never paid. The plaintiff wanted to usurp the valuable land of defendant. He had prepared the forged document. In the so called receipt the land was not mentioned nor its boundaries were mentioned. Plaintiff never turned up to pay the remaining consideration, there was no question of his visiting the defendant as no agreement had been entered into.

5. The trial court by the impugned judgment & decree has held that agreement was entered into for a sum of Rs.11,50,000/-. While deciding issue no.2 it has been held that earnest money of Rs.1 lac was paid and sum of Rs.7 lacs was also paid. The plaintiff was willing to perform his part of contract, however, while granting the relief refund of sum of Rs.7 lacs has been ordered along with 9% interest per annum from the date of filing of the suit. Aggrieved thereby the instant appeal has been preferred.

6. Shri J.K. Verma, learned counsel for appellant-defendant, has submitted that document (Ex.P.3) is ex-facie forged document. There are certain over-writings and interpolations made in the same. Earlier a different year was written. By overwriting on the same word "202" was mentioned instead of the year 2002. There is overwriting in the figure of Rs.11,50,000/- as well as in the word also in

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the document. There is overwriting in several lines of the document. Initially document was written as apparent from the document itself with respect to transaction of cultivating the land on the basis of crop sharing. The document commences with the words "*Gehu four Bora, khasra no.49*". Thereafter overwriting and correction which have been made is apparent that document has been manufactured to evince payment of Rs.7 lacs. The word "11.6.202" has been mentioned not at one place but at two places. The witnesses Sugnabai and Ramdas have stated that payment was made in their presence whereas plaintiff has stated that he had not made payment on the date 11.6.2002 the said receipt was executed. The receipt was executed in the presence of aforesaid witnesses. Plaintiff has stated that payment was made earlier in two installments. Appellant's counsel has also submitted that there was no whisper as to the said receipt (Ex.P.3), in the notice which was issued. The specimen writing of defendant (Ex.P.1) defers from the document (Ex.P.3). There was no cogent evidence adduced by the plaintiff so as to prove that document (Ex.P.3) was executed by defendant no.1. Defendant no.1 is the widow. Plaintiff has miserably failed to prove that consideration of Rs.8 lacs was advanced. The trial court has held that earnest money of Rs.1 lac was not paid, as refund has not been ordered, thus, there was no question of payment of further sum of Rs.7 lacs. The decree for refund of Rs.7 lacs could not have been passed in the facts & circumstances of the case as the said amount was never paid nor the receipt evincing the payment was ever executed by the defendant Shantibai Rathore.

7. Shri A.D.Mishra, learned counsel for respondent-plaintiff, has submitted that refund of Rs.7 lacs has been rightly ordered as that is evinced by the receipt (Ex.P.3). On comparison of signature on Ex.P.3 and specimen writing (Ex.D.1) of defendant the trial court has rightly held that document (Ex.P.3) was executed by defendant Shanti Rathore. There are no material contradictions. Prayer was made to appoint an expert for comparison of the signature which prayer was not allowed by the trial court.

8. The main question for consideration is whether the agreement for sale of 10 acres of land was entered into between the parties. Admittedly, there is no document of entering into an agreement executed on 26.5.2002, the date on which the said agreement is said to have been entered into and sum of Rs.1,00,001/- was paid by way of earnest money. In the notice which was given by the plaintiff (Ex.P.4) it was not mentioned that any receipt evincing the payment of Rs.7 lacs was executed by defendant no.1 on 11.6.2002. Since the initial transaction was oral one, in case receipt was in existence as on the date of serving of notice, this fact should have been mentioned in the notice. Conspicuously the said fact is absent.

9. The plaintiff Radheshyam has stated that he had entered into an oral agreement for sale with defendant no.1 for a sum of Rs.11,50,000/- on 26.5.2002

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and on 26.5.2002 earnest money of Rs.1,00,001/- was paid at Mahendragoon. Remaining amount was to be paid in two installments. Whenever he could arrange the money, he used to pay to defendant Shantibai, thus, he paid additional sum of Rs.7 lacs by 11.6.2002 and a sum of Rs.8 lacs stood paid to defendant no.1. When plaintiff asked to enter into an agreement it was assured by defendant Shantibai that they were having good relations and assured him of executing the sale-deed as and when remaining amount was paid by him. On being insisted by the plaintiff the defendant Shantibai on 11.6.2002 gave a receipt of payment of Rs.7 lacs in the presence of the witnesses. Due to good relationship he believed the version of Shantibai. When on 15.7.2002 he visited defendant Shantibai with sum of Rs.2,75,000/- she declined to execute the sale-deed and demanded the full money. She did not execute sale-deed and started frivolous proceedings against the plaintiff, as such a notice was served through counsel, inspite of that sale-deed was not executed. In the cross-examination he has stated that it was not clearly mentioned what was the boundary 10 acres of agricultural land. With respect to the document (Ex.P.3), so called receipt he has admitted that document (Ex.P.3) commenced from the words "Four bags of wheat" which were sent by him to Shantibai as he had obtained the land on crop sharing basis, in lieu thereof he had sent the bags. He has stated that amount was paid of Rs.7 lacs in two installments. He had paid sum of Rs.4 lacs within a period of one month and paid Rs.3 lacs within a period of 15 days. Thus, the amount of Rs.8 lacs had already been received by defendant Shantibai before document (Ex.P.3) was reduced in writing. The witnesses had admitted that in receipt (Ex.P.3) Rs.7 lacs was mentioned not Rs.8 lacs. It was also put that Ex.P.3 was not written by Shantibai. He has also admitted in receipt (Ex.P.3) that the year "2002" was not mentioned, in that place year "202" was mentioned by making overwriting at two places. He has also admitted that he has not mentioned in the notice the execution of receipt (Ex.P.3) by defendant. He has also denied the suggestion that receipt has been manufactured after service of notice. He has also stated that defendant had lodged the report to the police earlier against him but said report was incorrect and fraudulent. He could not state whether any reply to the notice was sent by the defendant to his counsel.

10. Ramdas (PW-3), the witness of plaintiff Radheshyam has stated that sum of Rs.7 lacs was paid in his presence to Shantibai at village Mahendragoon. On the said very date Shantibai had written a receipt (Ex.P.3) dated 11.6.2002 which was signed by Shantibai and by the witnesses and Sugnabai. It is not the plaintiff's case that sum was paid as on the date of execution of receipt (Ex.P.3), thus, the witness falsifies the version of plaintiff and completely renders the version of payment itself unworthy of credence. Plaintiff (PW-1) has stated that amount stood paid before execution of receipt (Ex.P.3) whereas his witness Ramdas (PW-3) in para-3 has stated that amount was paid to Shantibai in her house of which a

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letter signed by her was given. Thus, there is material contradiction. The plaintiff has not been able to establish that sum of Rs.7 lacs was in fact paid. Plaintiff has not stated the date of payment of Rs.7 lacs and why he did not obtain the receipt when he was making the payment of huge consideration such as amount of Rs.4 lacs and Rs.3 lacs in two installments.

11. When we consider the statement of Sugnabai (PW-4), she has also stated in para 3 that at Mahendragaoon sum of Rs.7 lacs was paid in her presence by Radheshyam to Shantibai which is not the case of even the plaintiff. Plaintiff has stated that amount was paid earlier and receipt was executed later on. Plaintiff has come up with the case in the notice also it was mentioned that amount of Rs.7 lacs was paid in installments. In the plaint also it was mentioned that amount of Rs.7 lacs was paid in two installments whereas the aforesaid witnesses examined by the plaintiff have stated that the entire amount of Rs.7 lacs was paid in their presence in lump-sum. Plaintiff has miserably failed to prove that sum of Rs.7 lacs was paid. Plaintiff has also failed to prove that it was paid in installments or in lump-sum. As there are material contradictions in the version of plaintiff and witnesses examined by him as to the payment of consideration, in our opinion, payment of consideration of Rs.7 lacs has not been established. Sugnabai (PW-4) was also unable to state what was written in the document (Ex.P.3) and currency of how much denominations was handed over. Thus, we hold that sum of Rs.7 lacs was not paid to the defendant. The very execution of document in the presence of Ramdas (PW-3) and Sugnabai (PW-4) also becomes doubtful. They are not reliable witnesses.

12. When we consider the statement of Shobharam (PW-2), he has stated that when he had gone to the house of Shantibai along with Radheshyam, defendant Shantibai had retained the sum of Rs.2,75,000/- and thereafter refused to execute sale-deed. It is not the case of plaintiff that he had paid sum of Rs.2,75,000/-, thus, very visit of witness Shobharam along with Radheshyam to make the payment Rs.2,75,000/- falls down. The plaintiff has not been able to establish by satisfactory evidence that he had visited defendant no.1 with sum of Rs.2,75,000/-. The witness has exceeded the brief while stating that Shantibai had received a further sum of Rs.2,75,000/- which is not the case set up by the plaintiff in the plaint. In the plaint the plaintiff has come up with the case that total sum of Rs.8 lacs was paid not Rs.10,75,000/-. If the statement of Shobharam is relied upon then plaintiff would have made the advance payment of Rs.10,75,000/- which is not even the case set up by the plaintiff.

13. The execution of agreement has not been established, there was no question of payment of sum of Rs.7 lacs in installments or in lump-sum, the payment of which has not been established. The trial court has not passed decree for a sum of Rs.1 lac which is stated to be paid as earnest money, the payment of which has not been established by adducing satisfactory evidence. Plaintiff himself has

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admitted that he had sent four bags of wheat to Shantibai. The receipt (Ex.P.3) had commenced from that. There was no occasion whatsoever to combine the two transactions, that does not make any sense in the document. The plaintiff Radheshyam has not stated that amount of Rs.1 lac was paid in the presence of witness Shobharam. The witness Shobharam has also not been found reliable with respect to payment of sum of Rs.2,75,000/-, later on as that is not even the case of plaintiff, thus, the presence of Shobharam and entering into of the very agreement has not been established by the plaintiff by adducing satisfactory evidence. The relations of the parties were strained, it has been admitted that previously a criminal case was tried against the plaintiff by the defendant. There were proceedings u/Ss 107 and 116 of the Cr.P.C. also.

14. The receipt (Ex.P.3) has been relied upon by the trial court. It reads thus :-

“ गेहूँ 4 बोरा
11,50,000 = 00 ख० नं० 49
ग्यारह लाख पचास हजार रुपये में जमीन का
सौदा हुआ दिनांक 11.6.202 दिन शुक्रवार
सात लाख रुपये पाये

श्रीमती शान्ति राठौर

11.6.202

सुगनाबाई पति रामाधार
रामदास गौर

[underline applied by us]

When we read the aforesaid document (Ex.P.3), there is overwriting at the places underlined by us, it starts from word "गेहूँ 4 बोरा" then there is again overwriting in the crucial numeral 11 and again there is overwriting in words 11. There is again overwriting in the words "Sauda" mentioned in fourth line and again in fourth line the year initially was different and later on it has been mentioned 11.6.202. It has not been mentioned to be the year "11.6.2002". On close scrutiny of the document with magnifying glass it is clear that some other year was mentioned beneath numeral "202". Again there is overwriting in the last line in the words "सात लाख रुपये पाये". There is overwriting on several words in the same line. Again below the signature of Shantibai Rathore the year has been changed to "202" which cannot be the year, it does not make out any sense. If it means to be year "2002", it should have been mentioned "11.6.2002" as the defendant was a literate and was a Teacher at the relevant time, she would not have committed said blunder. Similarly the statements of witnesses Suganbai and Ramdas are contradictory to the plaintiff's case as to the date of payment of the amount, it is not necessary to compare receipt (Ex.P.3) which on record by the specimen writing. The plaintiff has not been able to prove that he had made the payment of Rs.7

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lacs and has also failed to prove that the agreement to sell was entered into. So as to deal with the arguments, when we compare the specimen writing obtained by the court as Ex.D.1, with specimen, the writing is quite different on Ex.P.3. We make it clear that we are not an expert. We have undertaken aforesaid exercise so as to meet rival submission and to prima facie satisfy ourselves as to finding recorded by trial court. Prima facie it appears that both the writings are quite different.

15. Considering the aforesaid fact that there was strained relations. There was no reason due to strained relationship to rely upon the defendant for entering into the oral agreement to sell for the purpose of sale of property for consideration of Rs.11,50,000/-. It can also not be ignored that defendant has stated that dispute arose with respect to payment of amount when land was given for cultivation on crop sharing basis and plaintiff has admitted that he had sent four bags of wheat as mentioned in the receipt (Ex.P.3). There are overwriting and manipulations in the document (Ex.P.3). Thus, document (Ex.P.3) cannot be said to be reliable at all. There are material alterations in the same and it has not been established by adducing satisfactory evidence that it has been executed by the defendant Shantibai Rathore.

16. Now we come to the submission that expert was not appointed. In the instant case, considering the oral evidence on record expert evidence would not have tilted the balance at all in favour of the plaintiff. There are so many material contradictions in the plaintiff's version and that of his witnesses, moreover document (Ex.P.3) is so much manipulated one and its due execution by defendant has also not been proved, it could not have been acted upon and relied upon at all. Thus, we have no hesitation in setting aside the impugned judgment & decree passed by the trial court.

17. Resultantly, the appeal is allowed. The impugned judgment & decree is set aside. The cost of appeal to be borne by the respondent.

Appeal allowed.

I.L.R. [2010] M. P., 939

APPELLATE CIVIL

Before Mr. Justice N.K. Mody

9 December, 2009*

SUNIL KULKARNI (DR.)

Vs.

JAGDISHSINGH

... Appellant

... Respondent

A. Accommodation Control Act, M.P. (41 of 1961), Section 23-J - Plaintiff was a landlord of a special category as mentioned u/s. 23-J - Plaintiff

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has filed the suit u/s 12(1)(a) & (f) before Civil Court - Suit cannot be dismissed for want of jurisdiction - Reasons mentioned. (Para 19)

क. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23-जे - वादी धारा 23-जे के अन्तर्गत यथा उल्लिखित विशेष प्रवर्ग का भूस्वामी था - वादी ने धारा 12(1)(ए) व (एफ) के अन्तर्गत सिविल न्यायालय के समक्ष वाद प्रस्तुत किया - अधिकारिता के अभाव में वाद खारिज नहीं किया जा सकता - कारण उल्लिखित।

B. Accommodation Control Act, M.P. (41 of 1961), Sections 12(1)(a), 12(3) & 13(5) - In spite of notices and after service of summons of the Court, tenant has chosen not to deposit the rent in Court - Tenant took the risk of suffering the order of eviction - Ground u/s 12(1)(a) made out - Tenant is not entitled for protection u/s 12(3) & 13(5) as the tenant never deposited the rent as claimed by the landlord. (Para 27)

ख. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराएँ 12(1)(ए), 12(3) व 13(5) - सूचना पत्रों के बावजूद और न्यायालय के समन की तामील के बावजूद भी किरायेदार ने न्यायालय में किराया जमा नहीं किया - किरायेदार ने बेदखली का आदेश होने देने का जोखिम उठाया - धारा 12(1)(ए) के अन्तर्गत आधार बना - किरायेदार धारा 12(3) और 13(5) के अन्तर्गत संरक्षण का हकदार नहीं, क्योंकि किरायेदार ने कमी किराया जमा नहीं किया, जैसा भू स्वामी द्वारा दावा किया गया है।

C. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - Bona fide need - Plaintiff was born and brought up at Indore - Plaintiff shifted to Bhilai because of his job - He retired from service - He requires the suit accommodation for starting of Computer Classes - Evidence unrebutted - Though in cross-examination plaintiff admitted that he is still in occupation of the house allotted by his employer at Bhilai - It cannot be said that plaintiff is making a false claim of bona fide need just to evict the tenant. (Para 28)

ग. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) - वास्तविक आवश्यकता - वादी का जन्म और पालन-पोषण इन्दौर में हुआ - वादी नौकरी के कारण भिलाई स्थानांतरित हो गया था - वह सेवानिवृत्त हो चुका है - उसे वादग्रस्त स्थान की कम्प्यूटर कक्षाएँ प्रारम्भ करने के लिए आवश्यकता - साक्ष्य अखण्डित - यद्यपि वादी ने प्रतिपरीक्षा में यह स्वीकार किया कि वह अभी तक भिलाई में उसके नियोक्ता द्वारा आवंटित मकान के अधिमोग में है - यह नहीं कहा जा सकता कि वादी मात्र किरायेदार को बेदखल करने के लिए वास्तविक आवश्यकता का मिथ्या दावा कर रहा है।

D. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - Alternative accommodation - Alternative accommodation should be reasonably suitable non-residential accommodation - First floor cannot be said to be an alternative suitable accommodation in connection with the shop situated on the ground floor - A shop on the first floor cannot attract the same number of customers and earn the same business as the shop on ground floor would do. (Para 29)

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घ. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – वैकल्पिक स्थान – वैकल्पिक स्थान युक्तियुक्त रूप से उपयुक्त अनिवासीय स्थान होना चाहिए – भू-तल पर स्थित दुकान की तुलना में प्रथम तल को उपयुक्त वैकल्पिक स्थान नहीं कहा जा सकता – प्रथम तल पर स्थित दुकान उतने ग्राहकों को आकर्षित नहीं कर सकती और उतना व्यवसाय अर्जित नहीं कर सकती जितना कि भू-तल पर स्थित दुकान करेगी।

Cases referred :

(2002) 6 SCC 16, 2006(1) MPLJ 231, 2006(3) MPLJ 125, 2007(I) MPACJ 325, AIR 1979 SC 551, 1967 JIJ 117, 1963 JIJ SN 303, 1997 MPRCJ Note 67, 1983 MPLJ 51, S.A. No.260/2004 decided on 28.09.2006, AIR 2008 SC 2611, 2000(2) MPLJ 385, 2009(IV) LSCT 103.

G.M. Chaphekar with D.S. Kale, for the appellant.

S.C. Bagadia with Mayank Purohit, for the respondent.

J U D G M E N T

N.K. Mody, J. :-Being aggrieved by the judgment and decree dated 3.01.06 passed by XIII Additional District Judge, Indore in Civil Suit No.28A/04 whereby the suit filed by the respondent under section 12(1)(a) and (f) of the Madhya Pradesh Accommodation Control Act (hereinafter called as “the Act”) was decreed and the appellant was directed to vacate the suit accommodation and also to pay arrears of rent, present appeal has been filed.

2. Short facts of the case are that the respondent filed a suit for eviction against the appellant alleging that the appellant is in occupation of the accommodation bearing house No.22/1 situated at Kachhi Mohala, Indore. It was alleged in the plaint that Ambalal, father of respondent, was the owner of the accommodation, who has died in November, 1990. It was alleged that Ambalal during his life time executed a gift deed dated 31/12/1963, whereby the suit-property was gifted by Ambalal to the respondent. It was further alleged that appellant is the tenant in the suit-accommodation at the rate of 1500/- per month. Appellant is irregular in paying the rent and is in arrears of rent w.e.f. 01/11/93 which has not been paid in spite of demand. It was also alleged that respondent requires the suit-accommodation for running Computer Classes bonafidly and for this purpose, respondent is having no other alternative accommodation of his own. It was alleged that since the rent was not paid in spite of demand notice dated 12/06/03, which was duly served on the appellant, therefore, respondent is entitled for a decree of eviction under Section 12(1)(a) & (f) of the Act.

3. The suit was contested by the appellant by filing written statement. It was alleged in the written statement that the appellant was inducted in the suit premises by Ambalal, father of the respondent, as tenant @ Rs.200/- per month in the year 1980. It was also alleged that after his death brother of the respondent was receiving the rent from the appellant and the rent has already been paid up to 30/06/2004. It was denied that appellant was in arrears of rent and the need of

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the respondent is bonafide. It was prayed that the suit filed by the respondent be dismissed.

4. On the basis of the pleadings of parties learned trial Court framed the issues, recorded the evidence and decreed the suit filed by the respondent under Section 12(1)(a) and (f) of the Act against which present appeal has been filed.

5. During pendency of appeal an application was filed by the appellant under Order VI Rule 17 CPC wherein prayer was made to amend written statement and to allow the appellant to raise a ground to the effect that respondent is a retired employee of the Steel authority of India which is an Undertaking of Government of India. It was alleged that since the respondent is a landlord of the category which is mentioned under Section 23-J of Act, therefore, learned Court below was having no jurisdiction to entertain the suit for eviction filed under Section 12(1)(f) of the Act.

6. Learned counsel for the appellant Mr. G.M. Chaphekar, submits that learned trial Court committed error in decreeing the suit under Section 12(1)(a) & (f) of the Act. Learned counsel submits that respondent was in employment of M/s. Bhilai Steel Plant, which is a Government undertaking. Thus respondent is a landlord of the category specified under Section 23-J of the Act, hence the Civil Court is having no jurisdiction to entertain the suit. For this contention reliance was placed on a decision of Hon'ble Apex Court in the matter of *Dhannalal Vs. Kalawatibai*, reported in 2002 (6) SCC 16, wherein the Hon'ble Apex Court has held as under :

- (i) *Where a claim for eviction is filed by a landlord, or a co-landlord, belonging to any one of the five categories defined in Section 23-J of the Act, as the sole applicant without objection by other co-landlords who have not joined as co-applicants and the nature of claim for eviction is covered by Section 23-A(b) of the Act, the proceedings would lie only before the Rent Controlling Authority.*
- (ii) *Where a claim for eviction is filed by a landlord or by such a co-landlord who does not belong to any of the categories defined by Section 23-J and the other co-landlord / landlady falling in one of the categories defined in Section 23-J is not joined as a co-plaintiff the claim shall have to be filed only by way of a suit instituted in a Civil Court.*
- (iii) *If the proceedings are initiated by such co-owner landlords, one or more of whom belong to Section 23-J category while some others are those not falling within the definition of "landlord" under Section*

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23-J and the requirement pleaded proves a cause of action collectively to all the landlords arrayed as plaintiffs or applicants, the choice of forum lies with the landlords. They may file an application before RCA under Chapter III-A or may file a civil suit in a civil court under Section 12 of the Act; in either case the proceedings would be competent and maintainable.

7. Learned counsel submits that after the decision of Hon'ble Apex Court, this Court in the matter of *Nandlal Vs. Mangibai*, reported in 2006(1) MPLJ, 231, has held that a composite plea of eviction cannot be entertained by a Civil Court as jurisdiction to try and decide applications under Section 23-J is conferred on Rent Controlling Authority. Reliance was also placed on a decision of this Court in the matter of *Shyamsingh Vs. Mulyabai*, reported in 2006 (3) MPLJ, 125, wherein in a suit filed by a divorced lady, it was held that since the divorced lady is covered under special category within the meaning of sub-section (iii) of Section 23-J, therefore, Civil Court is having no jurisdiction to entertain the suit. Reliance was also placed on a decision in the matter of *Ram Ratan Vyas Vs. Goverdhan*, reported in 2007 (1) MPACJ, 325, wherein this Court has held that a landlord who falls in these categories of cases specified in Section 23-J of the Act cannot file a civil suit before the Civil Court on the grounds covered under Section 12(1)(e) or (f) of the Act.

8. Mr. G.M. Chaphekar, learned counsel for the appellant further submits that the M.P. Accommodation Control Act came in force in the year 1961. Grounds for eviction which also covers ground under Section 12 (1)(e) & (f) remain for all categories of landlord till 15/08/1983. Chapter-III-A was introduced by M.P. Amendment Act No.27/83, which came in force w.e.f. 16/08/83, whereby Section 12(1)(e) & (f) were deleted and exclusive jurisdiction was given to Rent Controlling Authority. Learned counsel further submits that again the Act was amended by Act No 7/85, which came in force w.e.f. 16/01/85, whereby Section 12(1)(e) & (f) was restored and Section 23-J was also added wherein the word landlord was defined and for the purpose of Chapter III-A categories of person were mentioned in Section 23-J of the Act.

9. Learned counsel submits that keeping in view the language of Section 11-A of the Act which lays down that; The provisions of this Chapter i.e. Chapter III so far as they relate to the matter specially provided in Chapter III-A shall not apply to the landlord defined in Section 23-J of the Act. Learned counsel submits that since the respondent is an employee of undertaking owned by Government of India, therefore, respondent is landlord of the category defined, under Section 23-J of the Act and the ground mentioned under Section 12 of the Act is not available to the respondent.

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10. It is also submitted that it is true that this ground has not been raised before the learned Court below, but since it is a legal ground, therefore, it can be raised at any step of the proceedings. For this contention reliance is placed on a decision in the matter of *Ishwardas Vs. State of M.P.*, reported in AIR 1979, SC, 551, wherein Hon'ble Apex Court has held that there is no impediment or bar against an appellate Court permitting amendment of pleadings so as to enable a party to raise a new plea. All that is necessary is that the Appellate Court should observe the well known principles subject to which amendments of pleadings are usually granted. Naturally, one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and if made at the appellate stage, the reason why it was not sought in the trial Court. If the necessary material on which the plea arising from the amendment may be decided is already there the amendment may be more readily granted than otherwise. But, there is no prohibition against an Appellate Court permitting an amendment at the appellate stage merely because the necessary material is not already before the Court. "Reliance was also placed on a decision of this Court in the matter of *Sadashiv Balkrishna Vs. Jagdish Chandra*, 1967, J.L.J. 117, wherein this Court has held that amendment going to root of jurisdiction should not be disallowed. Learned counsel further submits that the learned Court is having no jurisdiction therefore, learned Court below committed error in decreeing the suit.

11. So far as decree under Section 12(1)(a) is concerned learned counsel submits that undisputedly Ambalal was the owner of suit property, who happens to be the father of respondent. In his life time the gift deed alleged to have been executed by deceased Ambalal on 31/12/1963, which is Exhibit P-1, but it was never acted upon and could never see the light of the day in the life time of Ambalal, who passed away in November, 1990. It is submitted that the appellant has executed the rent note in favour of Ambalal on 01/08/1980, vide Exhibit D-21 and also executed a rent note dated 19/10/1987, Exhibit D-22 which is the rent note of another portion, which is not in dispute. Learned counsel submits that the rent note Exhibit D-21 & D-22 goes to show that Ambalal always treated himself as landlord of suit accommodation. It is also submitted that Rent was always paid by the appellant to Ambalal in his lifetime for which receipts were issued from time to time and the rent was being collected by Badrilal, who happens to be brother of respondent. Since there was dispute about ownership and the rent was paid throughout by the appellant to Ambalal in his lifetime and to Badrilal after his death, therefore, no decree of eviction could have been passed against the appellant and in favour of respondent. It is also submitted that appellant has also examined Badrilal, who happens to be real brother of the respondent. It is submitted that since no specific part of the property was gifted to respondent by Ambalal, therefore, Badrilal and respondent were joint owners of the suit property, and no

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decree of eviction could have been passed against the appellant under Section 12(1)(a) of the Act, as the rent was always being paid by appellant to other co-owner, who is none else but brother of respondent. For this contention reliance was placed on a decision in the matter of *Uttam Singh Vs. Atiraj*, reported in 1963, J.L.J. (S.N.) 303, wherein it was held that rent paid to one of the co-landlords, the other co-landlord cannot demand arrears and file ejectment suit for non-payment of arrears.

12. Learned counsel for the appellant further submits that even if it is assumed that ground under Section 12(1)(a) of the Act was made out then too, since there was a dispute about quantum and the person to whom the rent was payable, therefore, operation of Section 13(1) of the Act was arrested and after fixation of provisional rent, the rent was regularly deposited by the appellant in Court, in compliance of Section 13(1) of the Act, therefore, also no decree of eviction could have been passed against the appellant U/s 12(1)(a) of the Act, as the appellant was entitled for protection against eviction U/s 12(3) and Section 13(5) of the Act.

13. Mr. GM. Chaphekar, learned senior counsel for appellant in alternate submits that even if it is assumed that the learned Court below was having the jurisdiction to entertain the suit under Section 12(1)(f) of the Act, then too, the said findings of the learned trial Court are illegal and deserves to be set aside. It is submitted that in support of the plaint allegations respondent has examined himself and no independent witness has been examined to prove the requirement. It is submitted that the respondent is a retire and senior citizen. In his whole life respondent was residing at Bhilai since last 40 years, therefore, it is unbelievable that at the fag end of his life, respondent will settle at Indore.

14. Learned counsel further submits that even if it is assumed that the need of the respondent is bonafide, then respondent is having an alternative accommodation, which is on the first floor of the suit property, which is lying vacant and is in possession of the respondent. Learned counsel placed reliance on a decision in the matter of *Hunsraj Lajpatrai Vs. Shanta Bai*, 1997 MPRCJ Note 67 wherein the case of the landlord was for his personal requirement and shifting his business from Nagpur to Indore, this Court held that the condition of the landlord is not appearing logical and reasonable, hence it was found that bonafide requirement is not proved. It is submitted that the burden to prove that respondent requires the suit accommodation bonafidely, was on the respondent. It is submitted that respondent himself admitted that respondent is permanently residing at Bhilai and has not pleaded that he wants to settle at Indore. It is submitted that unless respondent is settled at Indore, it is not possible for respondent to run computer classes in the suit accommodation. It is submitted that inspite of his retirement respondent is residing at Bhilai, this fact itself is sufficient to negative the ground of alleged bonafide need and suit ought to have been dismissed on that ground.

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Learned counsel further submits that prior to the filing of the suit, notice Ex.P/2 was issued by the respondent through his counsel and in the said notice also the alleged need of running the computer classes was not mentioned. It is submitted that respondent has stated that the fact relating to the need was disclosed to his counsel, but inspite of that the fact remains that it was not stated in the notice. It is also submitted that respondent failed to prove that respondent has acquired the knowledge of Computer technology. It is submitted that the area of the tenanted premises is also not sufficient to run the Computer Classes.

15. Mr. S.C. Bagadia, learned counsel for the respondent submits that respondent has filed the suit under Section 12(1)(a) & (f) of the M.P. Accommodation Control Act and is not claiming eviction to be a landlord of a special category specified under Section 23-J of the Act. It is submitted that since the amendment application filed by the appellant is based on the facts which requires elaborate enquiry and is not a simpliciter legal amendment, therefore, at this stage the same cannot be entertained. Learned counsel submits that since the suit for eviction was filed under Section 12(1)(a) & (f) of the Act and no claim was made that respondent is a landlord of special category, therefore, it is only civil court where the suit can be entertained. Learned counsel further submits that even if a suit is filed under section 12(1)(a) & (f) of the Act, by a landlord of specified category, then too, suit filed by the respondent under Section 12(1)(a) of the Act cannot be thrown out. It is also submitted that in none of the case laws cited by the learned counsel for the appellant, it was being held by any of the Court that the Civil Court is not competent to decide the suit filed on other grounds. So far as Section 12(1)(a) of the Act is concerned learned counsel submits that inspite of repeated demand the rent was not paid by the appellant. Even after filing of the suit the appellant failed to comply with section 13(1) of the Act. So far as decree under Section 12(1)(f) of the Act is concerned, learned counsel submits that after due appreciation of evidence learned trial Court found the need of respondent as bonafide, which requires no interference. It is submitted that in the facts and circumstances of the case learned Court below has committed no error in passing decree under Section 12(1)(a) of the Act.

16. In the matter of *Officers Association, Bhilai Steel Plant Vs. Steel Authority of India Ltd.* reported in 1983, MPLJ, 51, it was held that Bhilai Steel Plant is an undertaking of the Government of India. Since it is no more in dispute that the respondent is a retired employee of a Government undertaking, therefore, appellant is permitted to raise the ground in the arguments and for that formal amendment is not necessary in the written statement.

17. In the matter of *Dhannalal Vs. Kalawatibai* (Supra) the suit was filed by a landlord of the category under Section 23-J of the Act before the Rent controlling Authority and the Hon'ble Supreme Court has not examined the situation whether the suit can be filed by the landlord of special category laid down under Section

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23-J before the Civil Court for eviction on other ground including the ground of genuine requirement. In the matter of *Rajendra Singh Vs. Smt. Sulochna*, decided by this Court in S.A. No. 260/04. on 28/09/2006. while deciding the second appeal filed by a tenant wherein originally the suit was filed under Section 12(1)(a) & (f) of the Act and decree was granted under Section 12(1)(f) of the Act by the learned Court below holding that the suit accommodation is needed for business purposes, in second appeal it was only the decree passed under Section 12(1)(f) of the Act which was under challenge and in the circumstances this Court observed that the decree passed under Section 12(1)(f) of the Act was without jurisdiction. In this Case also this Court has placed reliance in the matter of *Nandlal Vs. Nangibai* (Supra) wherein suit for eviction was filed under Section 12(1)(a)(d) & (e) of the Act and when the matter came up before this Court on the point of jurisdiction this court has not dismissed the suit, as it was also filed on other grounds. On the contrary this Court directed that the Civil Court shall proceed with the trial of the suit leaving beside the question of bonafide need. That apart judgment passed by this Court was challenged before the Hon'ble Supreme Court and the matter is reported in AIR 2008 SC 2611 *Smt. Sulochana Vs. Rajendra Singh* wherein the landlady was widow and composite suit for eviction filed on different grounds including bona fide requirement, Hon'ble Apex Court held that keeping in view the averments in plaint not showing that suit is filed in the capacity of specified landlord, jurisdiction of civil Court does not stand excluded, moreso when title of landlady was disputed.

18. Mr. GM. Chaphekar, learned senior counsel for appellant submits that this case i.e. *Smt. Sulochana Vs. Rajendra Singh* (Supra) has no application in the present case. It is submitted that in that suit landlady who was the widow filed the suit for eviction on various grounds, including on the ground of genuine requirement in the Civil Court and the Hon'ble Apex Court has held that the jurisdiction of Civil Court is not excluded because at the time when the suit property was purchased, landlady was widow, while in the present case when the suit property was gifted to the respondent in the year 1963, respondent was not a retired employee meaning thereby not a landlord of specified category.

19. Keeping in view all the facts and circumstances of the case and the position of law, in the opinion of this Court, suit filed by the respondent can not be dismissed on the ground that the Civil Court was not having jurisdiction as the respondent was a landlord of a special category because of following reasons:-

- i. The jurisdiction of Civil Court is to be determined having regards to the averments contained in the plaint. When landlord respondent herein did not proceed on the basis that he was specified landlord "within the meaning of Sub-section (j) of Section 22 of the Act though he was retired.

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- ii. Respondent filed a composite suit of eviction i.e. not only on the ground of bonafide requirement but also on the ground of default of payment of rent.
- iii. Appellant in his written statement not only denied and disputed the title of the respondent but also denied and disputed that he was in default, alleging that the respondent is not a landlord / owner of the suit premises and it is Badrilal who is brother of the respondent is the owner / landlord. In the matter of *Sulochana* (Supra) Hon'ble Apex Court has observed that indisputably the issue as regards title over a property can be decided only by a civil Court and, therefore, there cannot be any doubt whatsoever that the suit as framed was maintainable.
- iv. Apart from the contention raised as regards to the bonafide requirement of the respondent, the issue as regards title over a property can be decided only by the civil Court, hence the suit was maintainable.
- v. It was more so when not only decree for eviction was prayed but a decree for payment of arrears of rent which otherwise could not have been granted by the Rent Controller was also prayed.
- vi. Moreover in the matter of *Smt. Sulochana* (Supra) Hon'ble Apex Court has taken into consideration the definition of 'specified landlord' as contained in Section 23-J of the Act and observed that it is not as broad as the definition of landlord defined under Section 2-b of the Act. It was further observed that since Sulochana purchased the suit premises on 23rd March, 1996 while the respondent was inducted as tenant of the premises was back in 1978, therefore, Sulochana was not a landlady of a special category. Applying the same analogy in the present case the appellant was inducted as tenant somewhere in the year 1980, while the suit property was gifted to the respondent on 31/12/63 and the father of the respondent died in the year 1990. At the time when the suit property was gifted to the respondent though the gift deed was not acted upon in his life time or at the time when the appellant was inducted in the year 1980 or at the time when the father of the appellant died in the year 1990, respondent was in job and was not a

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landlord of special category, therefore, it can not be said that the Civil Court was having no jurisdiction to entertain the suit.

- vii. Apart from this objection which have been raised in first Appeal which is not purely a question of law, cannot be entertained at this stage.

20. In view of this, objection raised by the appellant relating to the jurisdiction has no merits, hence rejected.

21. So far as suit filed under Section 12(1)(a) of the Act is concerned, it is no more in dispute that appellant was tenant of Ambalal @ Rs.1,500/- per month. Ambalal died in the year 1990, gift deed was executed by Ambalal in the year 1963, which was never acted upon by the parties. Before his death Ambalal executed the will. After his death notice was given by the respondent in the year 1993, which is Exhibit D-15, wherein it was specifically mentioned by the respondent that suit property in which appellant is tenant falls into the share of respondent and the name of respondent has been mutated in the Municipal records. By the said notice a demand of arrears was also made from the appellant. The notice was again repeated in the year 2003 before filing of the suit and appellant was asked to make the payment of rent. Receipts of the notice are not in dispute as the notice Exhibit D-15 was filed by the appellant himself. Appellant is not an illiterate man, but a Doctor by profession and it is not expected from the appellant that knowing it well that there is a dispute regarding the ownership, appellant shall go on paying rent to Badrilal, who happens to be brother of respondent. It is true that some of the documents were filed by respondent during the cross-examination of Badrilal, who was examined by appellant and who happens to be brother of respondent, relating to the mutation of name of the respondent in municipal record. However it is not in dispute between the parties that the status of appellant was as of tenant. Apart from this the gift deed which was executed by the father of the respondent Exhibit P-1 is having a recital in para 6 which reads as under :

“ यह कि यह मकान मैं आप दोनों को बराबरी के हिस्से प्रमाण
दान में दे रहा हूँ । ”

22. Exhibit P-7 is the suit filed by Badrilal and his one brother Kanhaiylal against the respondent, wherein the will of the deceased Ambalal was under challenge and in the suit also there was reference about the property which is subject matter of the present suit. In Exhibit P-13, which is the extract of register of Municipal Corporation, respondent is shown as owner of the suit property, which is numbered as II.No.22/1 and appellant is shown as tenant in the suit accommodation. This information was given to the municipal authorities by Badrilal, who has also admitted in his statement that the particulars furnished in Ex.P/13 are based on the information given by him. Badrilal has also admitted in

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para 26 of his cross-examination that. whatever notice were being received from the Municipal Corporation relating to suit property was being received by the appellant and after giving information to Badrilal the same was being sent by the appellant to the respondent.

23. After taking all the facts into consideration learned Court below has found that the respondent was the landlord of the suit accommodation in which the appellant is tenant @ Rs.1,500/- per month. This Court finds that no illegality has been committed by the learned Court below in holding respondent as landlord and appellant as tenant in the suit accommodation of the respondent.

24. In the present case the arrears of rent were demanded vide notice dated 31/12/93 Ex.D/15 and notice dated 12/06/03 Ex.P/5, which were duly served and the suit was filed on 16/03/04, wherein arrears of rent were claimed for the period of last three years from the date of filing of the suit. Undisputedly neither notices were replied nor arrears of rent as claimed was tendered by the appellant to the respondent. Thus, the ground for eviction under Section 12(1)(a) of the Act is made out.

25. Summons of the Court was served on the appellant on 08/04/04. The appearance was made by the appellant on 24/04/04 and the written statement was filed on 15/06/04 i.e. after one month from the date of service of summons. In that written statement also there was no dispute raised about the amount of rent payable by the appellant, which can be said to be a dispute U/s 13(2) of the Act. So far as provisional rent is concerned, that was fixed by the learned trial Court upon the application dated 14/09/04 filed by respondent landlord vide order dated 28/02/05, whereby the appellant was directed to deposit the rent from March 2005. In the interim order dated 28/02/05 also it was specifically mentioned by the learned Court below that the case is listed for enquiry for fixation of provisional rent, but the offer has been made by the respondent that the respondent is accepting the contention of the appellant for the time being that the appellant has paid rent up to February 2005 to Badrilal brother of respondent, which itself is sufficient to show that the dispute raised by the appellant was U/s 13(3) of the Act, which relates to the rent payable to whom.

26. In the matter of *Jamnallal Vs. Radheshyam*, Reported in 2000 (2) MPLJ 385, the Hon'ble Apex Court has held that the scheme of section 13 of the M.P. Accommodation Control Act, 1961, suggests that the provisions thereof are intended for the benefit of both the tenant as well as the landlord. While section 13 affords protection to a defaulting tenant, willing to abide by the obligation to pay the rent regularly, against eviction on the ground of default in payment of rent, it also ensures payment of rent to the landlord, which he is entitled to receive for both the pre-litigation period as well as during the pendency of the litigation. Hon'ble Apex Court has also held that in a case where tenant admit the rate of rent but

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disputed the quantum of arrears of rent or/and the period for which it was due, the Court is not enjoined to hold summary inquiry contemplated under Section 13(2) of the Act to fix provisional rent. It was also held that Section 13(2) will become operative and tenant will have to face the consequences of non-payment of rent. It was held that if Court finds that the arrears of rent for the period in question were not paid, it has to pass the order for eviction and the tenant is not entitled to the benefit of section 13(5) read with Section 12(3) of the Act. Hon'ble Apex Court has further observed that where the rate of rent payable by the tenant for the accommodation is not in dispute and the quantum of arrears of rent is not paid/deposited other because the tenant pleads that he has paid the arrears of rent or adjusted the same towards the amounts payable by the landlord or in the discharge of his liability, the tenant succeeds or fails on his plea being accepted or rejected in that behalf by the Court, in such a case sub-section (2) is not attracted because the plea taken by the tenant has to be adjudicated by a full-fledged trial and not in a summary inquiry postulated for fixing a reasonable provisional rent in relation to the accommodation in question. This being the position a tenant takes the risk of suffering an order of eviction by raising a dispute in regard to the amount of rent payable by him while admitting the rate of rent and not making payment or deposit under sub-section (1) because where the dispute raised by the tenant is outside the ambit of sub-section (2) of sub-section (1) of section 13 of the Act does not become inoperative.

27. Keeping in view the aforesaid position of law and keeping in view the fact that inspite of notice dated 31/12/93 Ex.D/15 and notice dated 12/06/03 Ex.P/2 and after filing of suit on 16/03/04 and after service of summons and also after appearance on 24/04/04 appellant has chosen not to deposit the rent in Court. Appellant took the risk of suffering an order of eviction. In view of this, this Court is of the opinion that not only ground under Section 12(1)(a) of the Act was made out but also appellant is not entitled for protection under Section 12(3) and 13(5) of the Act, as the appellant never deposited the, rent as claimed by the respondent.

28. So far as the decree U/s. 12(1)(f) of the Act is concerned, undoubtedly respondent is resident of Indore by birth. Respondent was born and brought up at Indore. The suit accommodation is also ancestral property of the respondent. Respondent shifted to Bhilai because of his job. Respondent has categorically stated that respondent requires the suit accommodation for starting of Computer Classes. This part of the evidence of the respondent remained unrebutted. Nothing has been stated by the appellant regarding the alleged requirement of the respondent. The only witness which has been examined by the appellant apart from himself is Badrilal who is none else but the brother of the respondent and was always extending assistance to the appellant in the suit filed by the respondent. Badrilal also has stated that he has no information in regard to the intention of respondent to establish at Indore. There is nothing on record to disbelieve the

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respondent who is also a senior citizen that he requires the suit accommodation for carrying on a small business of Computer Classes, after settling down in his home town at Indore. It is pertinent to note that in cross examination of respondent it has come that respondent is still in occupation of the house which was allotted by M/s Bhilai Steel Plant, at Bhilai. Undisputedly respondent is original resident of Indore. Respondent is having the suit accommodation. Apart from this, respondent is also having another house, therefore, it can not be said that the respondent is making a false claim of bonafide need just to evict the appellant. In the matter of *Rambabu Vs. Jaikishanlal*, 2009 (IV) LSCT 103 Hon'ble Apex Court has observed that a person can start a new business even if he has no experience in the new business.

29. So far as alternative accommodation which has been suggested by the learned counsel for the appellant at the first floor of the suit property is concerned, in the matter of *Dhannalal* (Supra) Hon'ble Apex Court observed that an accommodation situated on first floor can not be said to be an alternative suitable accommodation in connection with the shop situated on the ground floor. It was further held that alternative accommodation should be a reasonably suitable non-residential accommodation. Hon'ble Apex Court has further observed that a shop on the first floor can not attract the same number of customers and earn the same business as a shop on the ground floor would do.

30. Apart from all the aforesaid facts and keeping in view the age of respondent the suit accommodation is more convenient for carrying on the business and the most important fact is that the appellant is doctor by profession and is aged 53 years only, has taken the suit accommodation for carrying on the clinic. Appellant has admitted in his cross-examination that appellant is in Government employment and is also receiving the non-practicing allowance from the Government, while running the clinic from the suit accommodation

31. In view of the aforesaid facts this Court is of the view that no illegality has been committed by the learned Court below in passing a decree of eviction against the appellant U/s 12(1)(a) and (f) of M.P. Accommodation Control Act. In view of this appeal has no force and is hereby dismissed. No order as to costs.

Appeal dismissed.

ANANTSINGH (DEAD) HARNAMSINGH V& HARICHARAN

I.L.R. [2010] M. P., 953

APPELLATE CIVIL

Before Mr. Justice A.K. Shrivastava

18 December, 2009*

ANANT SINGH (DEAD) THROUGH L.R.S.

HARNAM SINGH & ors.

... Appellants

Vs.

HARICHARAN & ors.

... Respondents

Transfer of Property Act (4 of 1882), Section 53-A - Part performance
- The doctrine of part performance is a weapon of defence - If the defendants are seeking the protection of this doctrine, they are required to discharge all the statutory obligations as provided u/s 53-A - Defendants never sent any notice to the plaintiff to get the sale deed executed in order to prove their readiness & willingness - Defendants have not discharged the statutory obligations - Although defendants are in possession of the suit property, but they are not entitled for protection u/s 53-A. (Para 12)

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 53-ए - मागिक पालन - मागिक पालन का सिद्धांत प्रतिरक्षा का शस्त्र है - यदि प्रतिवादी इस सिद्धांत का संरक्षण चाह रहे हों तो उन्हें धारा 53-ए के अन्तर्गत उपबंधित सभी कानूनी बाध्यताओं का पालन करना आवश्यक है - प्रतिवादियों ने अपनी तैयारी और रजामंदी साबित करने के लिए विक्रय विलेख निष्पादित कराने के लिए वादी को कभी कोई सूचना पत्र नहीं भेजा - प्रतिवादियों ने कानूनी बाध्यताओं का पालन नहीं किया - यद्यपि प्रतिवादी वादग्रस्त सम्पत्ति के कब्जे में हैं, परन्तु वे धारा 53-ए के अंतर्गत संरक्षण के हकदार नहीं हैं।

Cases referred :

(2002) 3 SCC 676, 2003(4) MPLJ 439.

R.P. Rathi, for the appellants.

Shishir Saxena, for the respondent No.1 to 7.

Nidhi Patanker, Dy.G.A., for the respondent No.8/State.

J U D G M E N T

A.K. SHRIVASTAVA, J. :- This Second Appeal has been filed at the instance of defendants as the suit for possession has been decreed by the learned trial Court and appeal which was filed by the defendants has been dismissed by the learned Lower Appellate Court. Original plaintiffs are Ram Prasad and Siriya and the original defendants are Anant Singh, Bhagat Singh and Shivrām Singh.

2. During pendency of Civil Suit, both the plaintiffs died and the present respondents were brought on record. Similarly one of the defendants-Shiv Ram Singh also died and his legal representatives were brought on record.

ANANT SINGH (DEAD) HARNAM SINGH Vs. HARICHARAN

3. According to the plaintiffs they are Bhumiswami of the suit property and are possessing the same, but, the defendants who are Ex-Zamindar are resourceful persons and by exercising their muscle power they illegally took possession of the suit property which is an agricultural land and hence the suit has been filed by them praying to deliver possession of the said property.

4. Defendants by filing written statement denied the plaint averments. In the special plea, it has been pleaded by the defendants that plaintiff No.1 Ram Prasad entered into an agreement of sale with the minor son of the defendant No.1 Anant Singh, namely, Raghunath Singh and by obtaining the consideration amount of Rs.1,300/- delivered the possession of the suit property to Raghunath Singh and the possession was obtained by his natural father Anant Singh for his minor son. This document of agreement of sale is dated 22.05.1968 and since then appellants are in possession of the suit property. It has been further pleaded by the defendants that in the document of agreement of sale no fix date has been mentioned to get the sale deed executed, however, defendant No.1 was always ready and willing to perform his part of contract but the plaintiffs avoided to execute the sale deed and were saying that because defendants are possessing the suit property, therefore, at any time the sale deed will be executed.

5. Learned trial Court framed necessary issues and after recording the evidence of the parties came to hold that the parties did not enter into any agreement of sale but real transaction between them was a loan was transacted and in order to secure loan, document of agreement of sale was got executed. Learned trial Court, hence decreed the suit of plaintiffs and appeal which was filed by the defendants before the learned Appellate Court has also been dismissed by the impugned judgment and decree.

6. In this manner this Second Appeal has been filed by the appellants/defendants assailing judgment and decree passed by two Courts.

7. This Court on 10.02.2003 admitted the appeal on the following substantial question of law:-

"Whether in view of the pleadings of the parties and the findings recorded by the Courts below, defendants are entitled to protect their possession under Section 53-A of the Transfer of Property Act" ?

8. The contention of Shri Rathi, learned Counsel for the appellants is that learned two Courts below failed to consider this material aspect of the matter that because document of agreement of sale has been proved and it is proved that in pursuance to the document of agreement of sale, the minor son of the defendant No.1 entered into the possession of the suit property and because the minor son of the defendant No.1 has died prior to filing of the suit, it would be deemed that his rights were devolved in favour of the defendant No.1 who is his father, and

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since defendants are in possession the suit property in pursuance to the agreement of sale, therefore, they are entitled for protection of their possession as envisaged under Section 53-A of the Transfer of Property Act, 1882 (hereinafter referred to as Act 1882). In support of his contention learned counsel for the appellant has placed heavy reliance on the judgment of Supreme Court in the case of *Shrimant Shamrao Suryavanshi And another Vs. Pralhad Bhairoba Suryavanshi (Dead) By Lrs, and Others* reported in (2002) 3 Supreme Court Cases 676.

9. Per contra, Shri Shishir Saxena learned counsel for the plaintiffs/respondents argued in support of impugned judgment and has submitted that the provision of Section 53-A of the Act would be applicable and the defendants were entitled to protect their possession on the basis of agreement of sale only when it is pleaded and proved by them that they abide all the necessary ingredients to this Section. Since there is neither any pleading of the defendants nor it has been so proved that they have send any notice to the plaintiffs to get the sale deed executed, it is difficult to infer that the defendants were ready and willing to perform their part of contract. In support of his contention learned counsel for the respondent has placed heavy reliance on the judgment of Supreme Court in the case of *Ramesh Chand Ardawatiya Vs. Anil Panjwani* reported 2003 (4) MPLJ 439.

10 After hearing learned counsel for the parties I am of the considered view that this appeal deserves to be dismissed.

Regarding substantial question of law framed.

11. On going through the document (Ex.D/1) which is agreement of sale as well as the findings of two Courts, this court finds that the learned two Courts below have found the execution of this document to be proved.

12. The question which now hinges is as to whether even if this document has been taken to be a document of agreement of sale whether defendants are entitled to protect their possession within the sphere of Section 53-A of the Act. On going through the judgment passed by the learned First Appellate Court, this Court finds that the learned First Appellate Court did not find this document to be an agreement of sale. This Court is not paying any heed to this finding for this simple reason that I am of the view that defendants are not entitled for the protection of their possession under Section 53-A of the Act, for the simple reason that all these facts are neither pleaded nor has been proved by them that they ever sent any sent any notice to the plaintiffs to get the sale deed executed in order to demonstrate that they are ready and willing to perform their part of contract. According to me, the doctrine of part performance is a weapon of the defence, however, if the defendants are seeking protection of this doctrine as envisaged under Section 53-A of the Act, they are required to discharge all the statutory obligations as provided under Section 53-A of the Act. Since there is nothing on record that defendants ever sent any notice to the plaintiff to get the sale deed executed in

SAVITRI BAI Vs. KRISHNA MORARI (DEAD) THROUGH L.R.

order to prove their readiness and willingness, according to me, in stricto sensu they have not discharged the statutory obligations. In these state of affairs, I am of the view that the decision of Supreme Court *Ramesh Chand Ardawatiya* (supra) placed heavy reliance by Shri Saxena learned counsel for the respondents/plaintiffs is squarely applicable in the facts and circumstances of the present case. The decision of Supreme Court in the case of *Shrimant Shamrao Suryavanshi* (supra) placed heavy reliance by the learned counsel for the appellants is not contrary to the stand taken by the plaintiffs, rather it helps them for the simple reason that in this case also it has been held by the Supreme Court that the protection under Section 53-A would be given to the defendants only if they fulfill the requirements prescribed under this section. Since it has already been held hereinabove that the defendants were not ready and willing to perform their part of contract, accordingly to me although they are in possession of the suit property, but they are not entitled for protection under Section 53-A of the Act.

13. The substantial question of law is thus answered against the appellants and it is hereby held that the appellants are not entitled for the protection under Section 53-A of the Act.

14. For the reasons stated herein above this appeal is found to be bereft of substance, hence it is hereby dismissed with costs. Counsel fee Rs.3,000/- if pre-certified.

Appeal dismissed.

I.L.R. [2010] M. P., 956

APPELLATE CIVIL

Before Mr. Justice Abhay M. Naik

14 December, 2009*

SAVITRI BAI

Vs.

KRISHNA MORARI (DEAD) THROUGH L.R.

... Appellant

... Respondent

Transfer of Property Act Gwalior State Samvat 2001, Section 119, Qanoon Registry, Riyasat Gwalior Samvat 1971, Section 9 - Suit for restoration of possession on the basis of title alleged to have been acquired by virtue of written permission by Ex-Zamindar - Written permission to make construction coupled with right to sell/mortgage to the grantee and his generation to generation - It should be treated as a gift in absence of consideration - The document was required to be registered - For want of registration plaintiff did not acquire any title - Since suit is based on title alleged to be acquired by the said document - The document can not be looked into for collateral purpose - Suit dismissed - Appeal allowed.

(Paras 12 to 14)

SAVITRI BAI Vs. KRISHNA MORARI (DEAD) THROUGH L.R.

सम्पत्ति अंतरण अधिनियम ग्वालियर स्टेट संवत् 2001, धारा 119, कानून रजिस्ट्री, रियासत ग्वालियर संवत् 1971, धारा 9 - पूर्व जमींदार की लिखित अनुमति के आधार पर कथित रूप से अर्जित किये गये स्वत्व के आधार पर कब्जे के प्रत्यावर्तन के लिए वाद - प्राप्तिकर्ता और उसकी पीढ़ी दर पीढ़ी को विक्रय/बंधक करने के अधिकार से युक्त निर्माण करने के लिए लिखित अनुमति - प्रतिफल के अभाव में इसे दान माना जाना चाहिए - दस्तावेज रजिस्ट्रीकृत होना आवश्यक था - रजिस्ट्रीकरण के अभाव में वादी ने कोई स्वत्व अर्जित नहीं किया - चूंकि वाद उक्त दस्तावेज के द्वारा कथित रूप से अर्जित स्वत्व पर आधारित है - आनुषंगिक प्रयोजनों के लिए दस्तावेज पर विचार नहीं किया जा सकता - वाद खारिज - अपील मंजूर।

A.K. Jain, for the appellant.

H.K. Shukla, for the respondent.

J U D G M E N T

ABHAY M. NAIK, J. :-Plaintiff/respondent instituted a suit for restoration of possession and mesne profits in respect of piece of land admeasuring 15ft. x 55 ft., situated at Mohna, district Gwalior. According to the plaintiff, he was owner of the suit land which formed part of a plot admeasuring 80 ft. x 195 ft., which was given to him by one Rao Sultan Singh, the Ex-Zamindar of village through a deed dated 20/3/1945. Since then, the plaintiff was in possession of the land. In the year 1956, he obtained permission for construction of a house on the said land from Gram Panchayat, Mohna and collected building material on it. The original defendant, namely, Nahneram forcibly encroached upon the land in the year 1965 and constructed a house on it. Defendant did not remove the encroachment despite notice dated 31/3/1965 which forced the plaintiff to institute a suit giving rise to the present appeal. Plaintiff claimed restoration of possession with mesne profits @ Rs. 5 p.m. w.e.f., 1/3/1965 till the date of restoration.

2. Nahneram submitted written statement denying thereby the claim of the plaintiff. He denied that the land was given to the plaintiff by Ex-Zamindar. On the contrary, it is contended that the defendant Nahneram obtained the land from Gram Panchayat, Mohna for constructing a house. Thus, the house constructed by him is a valid construction. The deed dated 20/3/1945 was opposed as inadmissible.

3. Learned trial court after recording the evidence dismissed the suit vide judgment and decree 24/7/1976.

4. Aggrieved by the aforesaid, plaintiff preferred Civil Appeal No.3A/85 which was allowed and decree for restoration of possession has been granted by the learned lower appellate court vide impugned judgment and decree dated 15/2/99.

5. Aggrieved by this reversal, the defendant/appellant preferred present appeal which has been admitted and heard on the following substantial question of law:-

Whether plaintiff could have acquired title vide Ex.P/1 despite its non-registration in contravention of Section 9 of Qanoon Registry, Riyasat Gwalior Samvat 1971 ?.

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6. Shri A.K.Jain and Shri H.K.Shukla learned counsel for the parties made their respective submissions.
7. It is contended by Shri A.K.Jain, learned counsel for the appellant that Ex.P/1 is not mere grant or licence to construct house but is a deed of transfer in respect of immovable property. Therefore, it ought to have been registered in view of Section 9 of Qanoon Registry, Riyasat Gwalior Samvat 1971.
8. Per contra, Shri Shukla learned counsel for the respondent contended that it is merely a grant for allowing the defendant to make construction and the same therefore does not require registration.
9. Considered the submissions and perused the record available in the file.
10. In order to appreciate significance and admissibility of Ex.P/1, I feel it necessary to reproduce it. It runs as under:-

Ex.P-1

अज ठिकाना मोहना जागीर

कागज लिख दिया महाराज श्री राव सुल्तान सिंह जी की सरकार से ईष्ण मुरारी पुत्र कन्हैयालाल वैश्य साकिन मोहना नाबालिग व सरपरस्त पिता श्री कन्हैयालाल वैश्य मोहना वाले को आगे मोहना गांव में होली वाले डांडे पर वास्ते बनाने मकान करो जमीन मुताबिक नक्शा पुस्त तुमको दी जाती है जिसके रहन बै करने का हक तुमको पुस्तनी दिया जाता है यह कागज लिख दिया सो सही फकत ता० २०/३/४५.

आज कागज का अवलोकन ।

किया

हस्ता० हिन्दी

B राम दयाल चोवे B

२४/४/५६

सील

सरपंच

ग्राम पंचायत मोहना पर० घाटीगांव

जिला गिर्द (म भा)

हस्ता० अंग्रेजी

A सुल्तान सिंह A

२०/३/४५

सील

जागीरदार

ठिकाना मोहना

परगना घाटीगांव

11. Ex.P-1 is stated to have been executed on 20/03/1945 by the then Zagirdar Sultan Singh. It confers a right on the plaintiff to make construction of house on the suit land as per the map endorsed on its reverse of Ex.P-1.

12. Plaintiff's counsel Shri. Shukla contended that this is a licence to construct a house on the suit land. However, on complete perusal of Ex.P-1, it is observed that a right to sell/mortgage is conferred not only on the grantee alone but generation to generation in future. Keeping this in mind, Ex.P-1 is to be construed as a document of transfer in the nature of gift because there is no mention of

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consideration in it. Transfer of Property Act of Erstwhile Gwalior State known as the "Transfer of Property Act Gwalior State Samvat 2001" was in force at the time of alleged execution of Ex.P-1. Section 119 of the said Act reads as under:-

"For the purpose of making a gift of immovable property, the transfer must be effected by registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered."

Perusal of the aforesaid provision makes it clear that gift of immovable property could not have been made at the time of execution of Ex.P-1 except by registered instrument.

13. Apart from the aforesaid, Qanoon Registry, Riyasat Gwalior Samvat 1971 was also in force in the erstwhile State of Gwalior. Its Section 9 reads as under:

दफा 9. — (1) दस्तावेजात मुन्दर्जे जैल की, जो ब तारीख नफाज कानून हाजा या माबाद तक्मील पायें, रजिस्ट्री होनी लाजमी है, यानी :-

दस्तावेज जिनकी रजिस्ट्री लाजमी है :-

(अ) वसीकजात हिबा जायदाद गैर मन्कूला, और

(ब) वसीकजात बिला वसियती जिनसे यह वांजह हो सा जिनकी यह तासीर हो कि ब जमाने हाल या आयन्दा कोई इस्तहकाक या हक्कियत या ख्वाह वह मौजूदा हो या शर्तिया यानी किसी वाकै वक्फ पर मिलने वाला, मालियती एकसौ रुपया और उससे जायद वाकै जायदाद गैर मनकूला पैदा होता है या करार दिया जाता है मुत्किल या मेहदूद या साकित होता है।

(स) दीगर वसीकजात बिला वसियती जिनमें इकरार वसूल या अदा हो जाने किसी मुआवजे का ब सबब पैदा होने या करार दिये जाने या मुत्किल या मेहदूद या साकित होने किसी इस्तहकाक या हक्कियत या हक्क मुन्दर्जे कलम (ब) के दर्ज हो।

(द) दस्तावेजात (मासिवाय वसियतनामजात) जिनकी रु से कोई जायदाद आम मजहबी या खैरती गरजों के लिये वक्फ की जावे या जिनकी रु से किसी ऐसी गरज के लिये जायदाद की निस्बत ट्रस्ट (अमानत) कायम की जावे।

नोट :- ऐसी दस्तावेजात में वक्फ या ट्रस्ट के मुतअल्लिक शरायत व इकरारात साफ दर्ज करना चाहिये।

(य) इख्तियारनामा तबनियत अगर वह इख्तियार बजर्य वसियत न दिया गया हो।

Aforesaid provision further makes it clear that gift of an immovable property could not have been effected at the time of Ex.P-1 without registered document.

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Ex.P-1 is neither stamped nor registered. Thus, the same is insufficient and incompetent in law so as to confer title of the suit property on the plaintiff/respondent. Ex.P-1 could have been construed merely as a licence, had there been no conferral by it of right to sell/mortgage. This right as per Ex.P-1 was not merely conferred on the plaintiff/respondent alone but was granted in perpetuity i.e. from generation to generation. Thus, obviously, this document could not be treated in law as merely a licence. It cannot be treated anything except gift. It is obviously hit by Section 119 of the Transfer of Property Act Gwalior State Samvat 2001 and Section 9 of Qanoon Registry, Riyasat Gwalior Samvat 1971.

14. Shri. Shukla, learned counsel, contended that Ex.P-1 may be considered for collateral purpose. This is again a misconceived submission because the suit of the plaintiff is based on title on the basis of Ex.P-1. Restoration of possession has been sought on the basis of title, said to have been acquired vide Ex.P-1. Thus, purpose of Ex.P-1 is not collateral.

15. In view of the aforesaid discussion, this Court has no hesitation in holding Ex.P-1 a gift deed and in further holding that for want of registration, plaintiff/respondent did not acquire any title to the suit property. Resultantly, the appeal is allowed by deciding substantial question of law in favour of the defendant/appellant. Judgment and decree of the learned lower appellate judge is hereby set aside restoring that of the Trial Court. Accordingly, the suit of the plaintiff/respondent stands dismissed, however, with no order as to costs.

Appeal allowed.

I.L.R. [2010] M. P., 960

APPELLATE CIVIL

Before Mr. Justice Abhay M. Naik

21 December, 2009*

SUNIL KUMAR

... Appellant

Vs.

DR. OM PRAKASH GARG & ors.

... Respondents

A. Transfer of Property Act (4 of 1882), Section 48 - Priority of rights created by transfer - Purchase made competently vide earlier registered sale deed is to be first protected. (Para 12)

क. सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 48 - अंतरण द्वारा सृष्ट अधिकारों की पूर्विकता - पूर्ववर्ती रजिस्ट्रीकृत विक्रय विलेख द्वारा पूर्ण किया गया क्रय पहले संरक्षित किया जाना चाहिए।

B. Civil Procedure Code (5 of 1908) [As amended], Order 6 Rule 15(4) - Verification of pleadings - Written statement containing admissions

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duly signed and verified by the defendants and equally duly attested by the advocate - Not accompanied by affidavit - Application pointing out such defect was not filed in the trial Court - Defendant not objecting but allowed the trial Court to proceed with such written statement - Held - Written statement not invalid. (Paras 16 & 17)

ख. सिविल प्रक्रिया संहिता (1908 का 5) [यथा संशोधित], आदेश 6 नियम 15(4) - अभिवचनों का सत्यापन - लिखित कथन, जिसमें स्वीकृतियाँ अंतर्विष्ट थीं, प्रतिवादियों द्वारा सम्यक् रूप से हस्ताक्षरित और सत्यापित किया गया और अधिवक्ता द्वारा समानतः सम्यक् रूप से अनुप्रमाणित किया गया - शपथपत्र सहित नहीं - विचारण न्यायालय में ऐसी त्रुटि को बताने वाला कोई आवेदन पेश नहीं किया गया - प्रतिवादी ने आपत्ति नहीं की बल्कि विचारण न्यायालय को ऐसे लिखित कथन पर कार्यवाही करने दी - अभिनिर्धारित - लिखित कथन अविधिमान्य नहीं।

C. Evidence Act (1 of 1872), Section 58 - *Facts admitted need not be proved - Written statement containing admissions not withdrawn until closure of plaintiff's evidence - Defendant denying his signature on the written statement while appearing as witness of another defendant - Held - Plaintiff entitled to take benefit of admissions and not required to prove the sale deed which was admitted in the written statement to have been executed.* (Para 20)

ग. साक्ष्य अधिनियम (1872 का 1), धारा 58 - स्वीकृत तथ्यों को साबित किया जाना आवश्यक नहीं है - लिखित कथन में स्वीकृतियाँ अंतर्विष्ट थीं जो वादी साक्ष्य समाप्त होने तक वापस नहीं ली गयीं - प्रतिवादी ने अन्य प्रतिवादी के साक्षी के रूप में उपसंजात होते समय लिखित कथन पर अपने हस्ताक्षरों से इंकार किया - अभिनिर्धारित - वादी स्वीकृतियों का लाभ लेने का हकदार और उस विक्रय विलेख को साबित करना आवश्यक नहीं जिसे निष्पादित किया जाना लिखित कथन में स्वीकार कर लिया गया।

Cases referred :

1986(II) MPWN 55, AIR 2005 SC 69, (2005) 12 SCC 186, (2005) 12 SCC 303, 1963 JIJ SN 14.

N.D. Singhal, for the appellant.

P.K. Patni, for the respondent No.1.

Anand Bhardwaj, for the respondent No.18.

None, for other respondents.

J U D G M E N T

ABHAY M. NAIK, J. :- This judgment disposes of S.A.No.253/07 and S.A.No.362/07. since they arise from common suit and common judgment and decree passed in the matter.

2. Facts relevant for the purpose of both the appeals emerging from the material on record are that there situated an agricultural land in village Sesai, Tahsil Kolaras, District Shivpuri comprised in survey No.1706 in area 0.08 hectare, survey No.1707 in area 0.53 hectare, survey No.1709 in area 0.66 hectare and

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survey No.1710 in area 0.66 hectare which was owned by Raghuvar and Baldeva having 1/3rd share each and Babulal and Ramcharan having 1/3rd share. Suit is in respect of the aforesaid land except survey No. 1709. Baldeva's 1/3rd share was purchased by Hariram through legal heirs of the former vide registered sale deed dated 26-02-1988 (Ex-D/1). Plaintiff, Dr. Omprakash purchased the suit land from Raghuvar, legal heirs of Baldeva, Babulal and Ramcharan vide registered sale deed dated 17-03-1992 (Ex-P/2). There occurred a partition between Raghuvar, Babulal, Ramcharan and legal heirs of Hariram on 10-02-2000 through revenue Court as is revealed in Ex-D/3. Sunil Kumar, original defendant No.18 (appellant of S.A.No.253/07) purchased the land comprised in survey No.1706, 1707 and 1709/min 1 from legal heirs of Hariram vide registered sale deed dated 14-08-2002 (Ex-D/5). Smt. Kusum Bai, original defendant No.17 purchased the share of Babu alias Babulal vide registered sale deed dated 10-09-02 (Ex-D/6), land comprised in survey No.1709/min in area 0.62 hectare and survey No.1710 in area 0.66 hectare from Babu. alias Babulal.

3. Plaintiff, Dr. Omprakash instituted a suit in respect of the land comprised in survey No 1706 in area 0.08 hectare, survey No.1707 in area 0.53 hectare and survey No.1710 in area 0.66 hectare, totally in area 1.27 hectare for declaration of title and restoration of possession with allegation that he has purchased 1.16 hectare land out of the suit land vide registered sale deed dated 17-03-1992 (Ex-P/2) for a consideration of Rs.20,000/-. Remaining area to the extent of 0.11 hectare is also purchased by the plaintiff from Sirmam (defendant No.4). Thus, plaintiff has become sole Bhumiswami of the suit land. On 22-09-03 he came to know that the disputed land is recorded in the names of defendants No.17 and 18, and their names were already entered in the record of rights. His contention is that the suit land having been purchased by him in due manner, the land could not have been mutated in favour of defendants No.17 and 18, hence, he sought declaration of title in his favour. He further prayed that if defendants are found in possession, decree for restoration of possession be also granted.

4. Defendants No.1 to 3 and 7 submitted their joint written statement and virtually accepted the claim of plaintiff. They further admitted to have sold the suit land to the plaintiff vide Ex-P/2 dated 17-03-1992.

Defendant No.5 (Shanti Bai D/o Baldeva) submitted her written statement. She denied to have executed the alleged registered sale deed dated 17-03-1992 in favour of plaintiff. She further opposed the suit on the ground of limitation.

Defendant No.14 (Shashi Bai Wd/o Hariram) and defendant No.16 (Himanshu S/o Hariram) submitted their joint written statement. They inter alia stated that their predecessor, namely, Hariram had purchased 1/3rd share from legal heirs of Baldeva vide registered sale deed dated 26-02-1988 and then obtained its possession, therefore, legal heirs of Baldeva had no right to execute

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the sale deed in respect of Baldeva's share vide registered sale deed dated 17-03-1992. It is further stated that legal heirs of Hariram further transferred the land, purchased by Hariram from Baldeva's heirs to Sunil Kumar (defendant No. 18) vide registered sale deed dated 14-08-02.

Defendant No. 17 (Smt. Kusum Bai) submitted her separate written statement, alleging therein that Babulal had not sold his share to the plaintiff. On the contrary, defendant 17 has purchased the land comprised in survey No. 1709 and 1710 which was share of Babulal. Sunil Kumar (defendant No. 18) submitted his written statement stating therein that he has purchased the share of Hariram from his legal heirs vide registered sale deed dated 14-08-02.

Defendants so submitted their written statements and denied that plaintiff is in possession over the suit land or part thereof. They prayed for dismissal of plaintiffs suit.

5. Chronological events as revealed in the pleadings and documents on record and consequences thereof prima facie appear to be-

i- There situated an agricultural land with survey No. 1706 in area 0.08 hectare, survey No. 1707 in area 0.53 hectare, survey No. 1709 in area 0.66 hectare and survey No. 1710 in area 0.66 hectare in all in area 1.93 hectare in village Sesai, Tahsil Kolaras, District Shivpuri. Prior to settlement (Bandobast) of the year 1988, the aforesaid land comprised in survey No. 373 alone.

ii- Following persons were Bhumiswami in cultivating possession of the suit land to the extent of their respective shares:

- a- Raghuvar : 1/3rd share
- b- Baldeva alias Barudewa : 1/3rd share
- c- Babulal and Ramcharan : 1/3rd share

iii- This litigation pertains to the land comprised in survey No. 1706 in area 0.08 hectare, survey No. 1707 in area 0.53 hectare and survey No. 1710 in area 0.66 hectare only with total area of 1.27 hectare.

iv- After the death of Baldeva, his legal heirs sold their share (0.630 hectare) out of 1.891 hectare being 1/3rd share to Hariram vide registered sale deed dated 26-02-1988 (Ex-D/1).

v- Plaintiff purchased the land in area 1.16 hectare out of 1.27 hectare of the land comprised in the suit land from Raghuvar, legal heirs of Baldeva alias Barudewa and remaining 1/3rd from Babulal and Ramcharan.

vi- An amicable partition took place between Raghuvar,

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Baldeva, Ramcharan and legal heirs of Hariram on 10-02-2000 as revealed in Ex-D/3, Ex-P/5 and Ex-P/6.

vii- Legal heirs of Hariram further sold the land comprised in survey Nos. 1706, 1707 and 1709/min 1 to Sunil Kumar (defendant No. 18) vide registered sale deed dated 14-08-02 (Ex-D/5).

viii- Babulal executed the registered sale deed dated 10-09-02 (Ex-D/6) to Smt. Kusum Bai (defendant No. 17) in respect of the land in area 1.28 hectare comprised in survey Nos. 1709 and 1710.

On the face value of aforesaid sale deeds, it may be observed that legal heirs of Baldeva after having executed the registered sale deed dated 26-02-1988 (Ex-D/1) were not further competent to join in the sale deed in favour of plaintiff vide Ex-P/2 dated 17-03-1992. Similarly, Babulal having executed the sale deed in respect of his share vide Ex-P/2 dated 17-03-1992 in favour of plaintiff was not further competent to execute further sale deed in favour of Smt. Kusum Bai on 10-09-02 vide Ex-D/6.

6. Learned trial Judge after recording the evidence dismissed the suit of plaintiff holding that the plaintiff has failed to establish that he is Bhumiswami of the suit land (1.16 hectare), out of total area of 1.27 hectare comprised in survey Nos. 1706, 1707 and 1710 of village Sesai, Tahsil Kolara, District Shivpuri. The suit was also dismissed as barred by limitation vide judgment and decree dated 27-04-06.

7. Aggrieved by the aforesaid, plaintiff preferred Civil Appeal No. 19-A/07 which has been partly allowed by learned lower appellate Judge vide judgment and decree dated 12-03-07 in the following manner:

a- Plaintiff is declared Bhumiswami of 1.16 hectare as claimed in the plaint.

b- Sunil Kumar Jain is held Bhumiswami and occupant of the remaining land of survey Nos. 1706, 1707 and 1710.

c- Plaintiff is held entitled to restoration of possession from Smt. Kusum Bai (defendant No. 17) and other vendors.

8- Aggrieved by the aforesaid Smt. Kusum Bai (Defendant No. 17) and Sunil Kumar Jain (defendant No. 18) have preferred S.A. No. 362/07 and S.A. No. 253/07 respectively which are admitted on the following substantial questions of law:

S.A. NO. 253/07

"In view of the appellant's vendor having purchased the share of Baldeva from his legal heirs prior to the purchase from them by the plaintiff, whether 1/3rd share in survey

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Nos. 1706 and 1707 (described in Ex-D/5) is liable to be protected before making declaration and granting restoration of possession in favour of the plaintiff with regard to his purchase vide Ex-P/2 ?"

S.A.No.362/07

"in view of non-withdrawal of admissions contained in written statement of the defendant appellant until closure of plaintiffs evidence, whether the plaintiff was obliged to prove the sale deed in his favour marked as Ex-P/2 and whether reversal of the judgment and decree of the trial Court is sustainable in the given facts and circumstances?"

9. Shri N.D. Singhal and Shri Anand Bhardwaj, learned counsel for appellant in both the appeals and Shri P.K. Patni, learned counsel for respondent No.1 made exhaustive submissions which have been considered in the light of material on record.

10. Admittedly, Raghuvar and Baldeva had 1/3rd share each and Babulal and Ramcharan had 1/3rd share in the land compromised in survey No.1706 in area 0.08 hectare, survey No.1707 in area 0.53 hectare, survey No. 1709 in area 0.66 hectare and survey No. 1710 in area 0.66 hectare of village Sesai, Tahsil Kolaras, District Shivpuri. Before settlement (Bandobast) all the survey numbers were compromised in a single survey No.373 with area 1.891 hectare. After the death of Baldeva, his legal heirs sold 1/3rd share of Baldeva in area 0.630 hectare to Hariram on 26-02-1988 vide registered sale deed marked as Ex-D/1. In view of this, plaintiff could not have purchased the share of Baldeva from his legal heirs on 17-03-1992 vide Ex-P/2. Section 44 of Transfer of Property Act, 1882 empowers a co-owner to transfer his share in immovable property. This section reads as under:

44. Transfer by one co-owner:- Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

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11. Section 48 of Transfer of Property Act may also be relevant in the facts and circumstances of this case which reads as under :

48. Priority of rights created by transfer- Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

12. Though Sunil Kumar (Defendant No. 18) has purchased subsequently vide registered sale deed dated 14-08-02 (Ex-D/5) from legal heirs of Hariram, it is observed that Hariram having made purchase in the year 1988 prior to the purchase made by the plaintiff, rights of Sunil Kumar are liable to be protected. Defendant No. 18 Sunil Kumar vide Ex-D/5 has purchased the land comprised in survey Nos. 1706, 1707 and 1709/min 1. Out of these survey numbers, plaintiff has not purchased survey No. 1709/min 1 at all. As regards survey Nos. 1706 and 1707 which are shown to have been purchased by plaintiff vide Ex-P/2 dated 17-03-1992, also from legal heirs of Baldeva, 1/3rd share of Baldeva already purchased by S. Sunil Kumar's vendor vide Ex-D/1 dated 26-02-1988 is first liable to be reserved for protecting interest of Sunil Kumar. Accordingly, judgment and decree of the lower appellate Court contrary to the aforesaid is hereby set aside. It is observed that registered sale deed dated 17-03-1992 (Ex-P/2) in favour of plaintiff shall have no effect on Baldeva's 1/3rd share in survey Nos. 1706 and 1707 purchased by Sunil Kumar vide Ex-D/5 whose vendor had already purchased it vide registered sale deed dated 26-02-1988 marked as Ex-D/1. Decree be also modified to this effect. Substantial question of law mentioned hereinabove in S.A.No:253/07 is decided accordingly in favour of appellant. Appeal is accordingly allowed in part to the aforesaid effect.

13. Shri Anand Bhardwaj, learned counsel for the appellant in S.A.No.362/07 contended that written statement of certain defendants including Babulal was not in conformity with Rule 15 of Order 6 of CPC. To appreciate this contention, I feel it necessary to reproduce the provision for convenience:

Order VI Rule 15. Verification of pleadings:- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other persons proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

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- (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.
- (4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

According to learned counsel, this provision having been inserted by virtue of Amendment of the year 1999 is of mandatory nature and absence of affidavit in contravention of Sub Rule (4) vitiates his written statement.

14. Before entering into merits of the legal submissions, I feel it necessary to deal with significance of the written statement in this case. As stated hereinabove Raghuvar, Baldeva, Babulal and Ramcharan were owners of the land in question to the extent of their respective shares. Plaintiff's case is that he purchased the suit land (1.16 hectare), out of 1.27 hectare which was owned and occupied by the aforesaid four persons. Plaintiff made a purchase vide registered sale deed dated 17-03-1992 (Ex-P/2) from Raghuvar, Babulal, Ramcharan and legal heirs of Baldeva. This was so pleaded in the plaint. In the written statement on behalf of certain defendants including Babulal, it has been clearly admitted in paragraph 3 that the said sale deed was duly executed by vendors including Babulal for a consideration of Rs. 20,000/-. This written statement has not only been signed and verified by Babulal but has also been attested by Advocate Shri Kamta Prasad Shrivastava of Kolaras with considerable standing. This written statement has never been withdrawn by Babulal.

15. It is pertinent to note that Babulal after closure of plaintiff's evidence appeared as witness for defendant No. 17 and denied to have executed the sale deed. Shri Anand Bhardwaj, learned counsel placed reliance on decision of this Court in the case of *Noshe Khan V. Masood Khan*. 1986 -II MPWN 55 to contend that written statement in the absence of affidavit was liable to be ignored.

16. In the case of *Noshe Khan* (supra) there was no verification of the written statement whereas in the case in hand written statement is not only duly signed and verified but is equally attested by the lawyer representing defendants. Moreover, effect of absence of affidavit has already been concluded by the Hon'ble Supreme Court of India in the case of *Dr. Mahachandra Prasad Singh V. Chairman, Bihar Legislative Council and others*. AIR 2005 SC 69 in following words:

There cannot be any dispute that sub-rules (1), (2) and (3) of Order VI Rule 15 CPC were complied with. Learned counsel for the petitioner has, however, laid great emphasis of the fact that Shri Salman Rageev had not filed any affidavit in support of his petition and consequently the provisions of sub-rule (4) of Order VI Rule 15 CPC which provides that the person verifying the pleadings shall also furnish an

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affidavit in support of his pleadings were not complied with. For the reasons stated earlier, we are of the opinion that the provisions of Rules 6 and 7 are directory in nature and on account of non filing of an affidavit as required by sub-rule (4) of Order VI Rule 15 CPC, the petition would not be rendered invalid nor the assumption of jurisdiction by the Chairman on its basis would be adversely effected or rendered bad in any manner.

Moreover, had there been an application by the appellant in the trial Court, pointing out the absence of affidavit by Babulal in support of written statement, the same could have been directed to be cured. In case of failure to cure such defect despite direction of the trial Court, the position would have been different. No such application is found to have been moved by the appellant.

17. Shri Anand Bhardwaj, learned counsel further placing reliance on the Apex Court decision in the case of *Rama Pulp & Papers Ltd. Vs. Maruti N. Dhotre*, (2005) 12 SCC 186 and again in the case of *Jagannath Vs. Arulappa and another*, (2005) 12 SCC 303, contended that learned trial Judge had ignored the written statement for want of affidavit which has not been considered by the lower appellate Court. Thus, according to learned counsel, learned lower appellate Judge has failed in performing his duty and the impugned judgment stands therefore, vitiated. I am not impressed with this submission because of *M.P. Singh's* decision (supra) of the Apex Court.

18. Shri Anand Bhardwaj, learned counsel for the appellant further drew attention of this Court to the statement of Babulal, who appeared as DW-6 as a witness of defendant No-18/appellant. It has been strongly argued that the registered sale deed Ex-P/2 has not been proved at all by any of the attesting witnesses and, therefore, the suit is liable to dismissal.

19. It may be seen that plaintiff expressly and specifically pleaded in paragraph 3 of the plaint that he has purchased the suit land vide registered sale deed dated 17-03-1992 for a consideration of Rs.20,000/- from the vendors including Babulal and possession was also simultaneously delivered to him. In the written statement submitted by certain defendants including Babulal, it has been clearly admitted that the sale deed was duly executed by the vendors mentioned therein which included Babulal. Further it has been specifically admitted in paragraph 6 that possession was also delivered to the plaintiff and defendant after executing the registered sale deed, did not perform agricultural work on the suit land. This written statement was not withdrawn by Babulal until closure of plaintiff's evidence. Section 58 of Indian Evidence Act, 1872 makes it clear that admitted facts need not be proved. This section reads as under:

58. Facts admitted need not be proved: No fact need to be

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proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

20. From the record of the trial Court, it is revealed that the evidence of plaintiff was closed on 14-07-05. Till then written statement of Babulal containing admissions about execution of registered sale deed dated 17-03-1992 and about delivery of possession was not withdrawn. There was no whisper in the case till closure of plaintiff's evidence that defendant Babulal would detract from his written statement on record or would take somersault in the matter of his stand contained in his written statement jointly submitted with certain other defendants. The written statement is not only duly signed and verified by Babulal, but is also duly attested by advocate Mr. Kamta Prasad Shrivastava, who was having a considerable standing. Moreover, Babulal himself in paragraph 14 of his statement has admitted that he had submitted written statement after engaging Mr. Kamta Prasad Shrivastava as an advocate. Although Babulal while appearing not as defendant but as witness of defendant No. 18 has stated that he had not submitted the written statement, it is not revealed in the record that Babulal had ever made complaint against advocate Mr. Kamta Prasad Shrivastava for attesting his alleged signature on the written statement. This conduct on the part of Babulal is clearly suggestive of the fact that he had no grievance against advocate Mr. Kamta Prasad Shrivastava. A litigant if aggrieved by the conduct of his lawyer shall either make a complaint against him before State Bar Council of Madhya Pradesh or shall take requisite steps against him which may include the suit for damages. Without taking resort to any of the remedial recourses, statement of a litigant cannot be lightly believed more so, against a lawyer who has already worked with repute for a considerable length. Under the Amended provisions of Code of Civil Procedure, parties to the litigation are to be first examined. Babulal despite being defendant No. 1 did not appear as witness in the capacity of defendant. He appeared after statement of defendant No. 18 merely as a witness. Since he had already parted with his interest and property, his statement cannot be construed as admission against the plaintiff under Section 18 of the Indian Evidence Act, 1872, in view of law laid down by this Court in the case of *Himmatsingh Vs. Pratapsingh*, 1963 J.L.J-SN 14. Thus, in view of the attending facts and circumstances, the statement of Babulal does not render any assistance to the defendant/appellant, who was not required to prove the sale deed dated 17-03-1992 contained in Ex-P/ 2 in view of non-withdrawal of admission on the part of vendors contained in written statement until closure of plaintiff's evidence.

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21. Since Babulal had already sold his share vide registered sale deed dated 17-03-1992 (Ex-P/2) to the plaintiff, he ceased to have a right to execute the sale deed again in respect of his share in respect of survey No.1 710. This Court does not make any comment in respect of purchase of the land comprised in survey No.1709 vide Ex-D/6 dated 10-09-02 since survey No.1709 is not subject matter of this litigation. It is made clear that this judgment shall have no effect on the sale deed in favour of defendant No. 18 in respect of survey No. 1709. Substantial questions of law, in view of above discussion is decided against the appellant. Appeal No. 362/07 is accordingly dismissed. No order as to costs.

S.A. 253/07 is partly allowed.

I.L.R. [2010] M. P., 970

APPELLATE CIVIL

Before Mr. Justice Rajendra Menon

4 January, 2010*

RAMESHWARLAL

... Appellant

Vs.

DATTATRAYA & ors.

... Respondents

A. Specific Relief Act (47 of 1963), Section 20 - Suit for specific performance of contract for sale of certain plots - Defence plea that agreements are executed as a security for loan - Held - Defendant had not made any effort to repay the loan nor had paid any interest on the loan - Defendant obtained colonizers licence and developed a colony - He has sold some plots also - Plea not acceptable. (Para 13)

क. विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 20 - कतिपय मूखण्डों के विक्रय की संविदा के विनिर्दिष्ट पालन के लिए बाद - प्रतिरक्षा अभिवचन कि करार ऋण की प्रतिभूति के तौर पर निष्पादित किये गये - अभिनिर्धारित - प्रतिवादी ने ऋण का प्रतिसंदाय करने का कोई प्रयत्न नहीं किया और न ही ऋण पर किसी ब्याज का भुगतान किया - प्रतिवादी ने कॉलोनी बसाने का लायसेंस अभिप्राप्त किया और एक कॉलोनी विकसित की - उसने कुछ मूखण्डों का विक्रय भी किया - अभिवचन स्वीकार्य नहीं।

B. Limitation Act (36 of 1963), Article 54 - Agreements initially were to execute sale deeds by 31.10.87 - On 01.04.94, defendant agreed to get the sale deed executed within a period of one month of his getting the permission from competent authority - The endorsement exceeds the time fixed for execution of sale deeds - Suit filed on 29.01.1996 i.e. within 3 years of extension of the agreement - Suit is within limitation. (Para 15)

ख. परिसीमा अधिनियम (1963 का 36), अनुच्छेद 54 - आरम्भ में करार 31.10.87 तक विक्रय विलेख निष्पादित करने के लिए थे - 01.04.1994 को प्रतिवादी सक्षम प्राधिकारी से अनुज्ञा

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प्राप्त करने के एक माह की कालावधि के भीतर विक्रय विलेख निष्पादित कराने के लिए सहमत हुआ – पृष्ठांकन से विक्रय विलेखों के निष्पादन के लिए नियत समय आगे बढ़ गया – वाद 29.01.1996 को अर्थात् करार के विस्तारण से 3 वर्ष के भीतर दाखिल किया गया – वाद परिसीमा के भीतर।

C. Specific Relief Act (47 of 1963), Section 20 - Specific performance of contract to sell plots - Equitable relief - Conduct of parties relevant - Defendant had a colonizers licence for developing the colony - After getting permission, he had sold various plots - No evidence that permission is refused to sell plots which were agreed to sell - Conduct of defendant shows that he was not interested in getting the agreements performed and was only interested in getting the agreements cancelled so that he can get enhanced value for the plots - Suit rightly decreed. (Para 18)

ग. विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 20 – मूखण्ड विक्रय करने की संविदा का विनिर्दिष्ट पालन – साम्यपूर्ण अनुतोष – पक्षकारों का आचरण सुसंगत – प्रतिवादी के पास कॉलोनी विकसित करने के लिए कॉलोनी बसाने का लायसेंस था – अनुज्ञा प्राप्त करने के पश्चात् उसने विभिन्न मूखण्डों का विक्रय किया था – कोई साक्ष्य नहीं कि उन मूखण्डों के विक्रय की अनुज्ञा नामंजूर की गई जिनके विक्रय का करार हुआ था – प्रतिवादी का आचरण दर्शाता है कि करार का पालन कराने में उसकी रुचि नहीं थी बल्कि केवल करार रद्द कराने में उसकी रुचि थी ताकि वह मूखण्डों के लिए बड़ी हुई कीमत पा सके – वाद उचित रूप से डिक्री किया गया।

D. Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, M.P. 1982 [Entire chapter VIII from Sections 24 to 32 omitted w.e.f. 31.08.1998], Sections 24 to 32 - Effect of omission on pending proceedings - Events and changes in the law occurring during the pendency of an appeal are required to be taken into consideration in order to do complete justice between parties - So that a futile decree may not be passed - It should be so moulded as to accord with the changed statutory situation. (Para 37)

घ. विनिर्दिष्ट भ्रष्ट आचरण निवारण अधिनियम, म.प्र. 1982 [सम्पूर्ण अध्याय 8 धारा 24 से 32 तक तारीख 31.08.1998 से विलोपित], धाराएँ 24 से 32 – लम्बित कार्यवाहियों पर लोप का प्रभाव – पक्षकारों के मध्य पूर्ण न्याय करने के लिए अपील लम्बित रहने के दौरान घटित घटनाओं और विधि में हुए परिवर्तनों को विचार में लिया जाना आवश्यक है – ताकि व्यर्थ डिक्री पारित न हो सके – उसे इस प्रकार ढालना चाहिए कि वह परिवर्तित कानूनी परिस्थिति के अनुकूल हो।

E. Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, M.P. 1982 [Entire chapter VIII from Sections 24 to 32 omitted w.e.f. 31.08.1998], Section 31, Specific Relief Act, 1963, Section 9, Contract Act, 1872, Section 23 - Defendant entered into an agreement for sale of plots and received earnest money - A suit for specific performance of contract - Defence plea that agreement is void, therefore, cannot be enforced - Held - 'No decree can

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be granted for enforcement of a void agreement' cannot be accepted as a universal principle - A decree for specific performance can be granted, when illegality or breach of law can be made good or cured by certain subsequent action, like obtaining permission or sanction or approval from the competent authority as envisaged under the statutory provision. (Para 39)

ड. विनिर्दिष्ट ऋष्ट आचरण निवारण अधिनियम, म.प्र. 1982 [सम्पूर्ण अध्याय 8 धारा 24 से 32 तक तारीख 31.08.1998 से विलोपित], धारा 31, विनिर्दिष्ट अनुतोष अधिनियम, 1963, धारा 9, संविदा अधिनियम, 1872, धारा 23 - प्रतिवादी ने भूखण्डों के विक्रय के लिए करार किया और अग्रिम धनराशि प्राप्त की - संविदा के विनिर्दिष्ट पालन के लिए वाद - प्रतिरक्षा अभिवचन कि करार शून्य है, इसलिए प्रवर्तित नहीं किया जा सकता - अभिनिर्धारित - 'शून्य करार के प्रवर्तन हेतु कोई डिक्री प्रदान नहीं की जा सकती' को सर्वव्यापी सिद्धांत के रूप में स्वीकार नहीं किया जा सकता - विनिर्दिष्ट पालन के लिए डिक्री तब प्रदान की जा सकती है जब अवैधता या विधि के उल्लंघन की प्रतिपूर्ति या सुधार कतिपय पश्चात्पूर्वी कार्यवाही द्वारा किया जा सकता है जैसे कि सक्षम प्राधिकारी से अनुज्ञा या मंजूरी या अनुमोदन अभिप्राप्त करना जैसा कि कानूनी उपबंध के अन्तर्गत परिकल्पित है।

F. Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, M.P. 1982 [Entire chapter VIII from Sections 24 to 32 omitted w.e.f. 31.08.1998], Sections 24 to 32 - *W.e.f. 31.08.98, the entire chapter VII' containing Sections 24 to 32 has become redundant - Judgment & decree was passed on 25.02.99, therefore, these provisions of Adhiniyam were not required to be complied with.* (Para 40)

च. विनिर्दिष्ट ऋष्ट आचरण निवारण अधिनियम, म.प्र. 1982 [सम्पूर्ण अध्याय 8 धारा 24 से 32 तक तारीख 31.08.1998 से विलोपित], धाराएँ 24 से 32 - 31.08.98 से धारा 24 से 32 को अन्तर्विष्ट करने वाला सम्पूर्ण अध्याय 8 व्यर्थ हो गया है - निर्णय और डिक्री 25.02.99 को पारित की गई इसलिए अधिनियम के इन उपबंधों का अनुपालन करना आवश्यक नहीं था।
Cases referred :

AIR 1959 SC 589, AIR 1968 SC 534, (1995) 2 SCC 549, (1997) 3 SCC 1, AIR 1997 SC 2676, (1998) 3 SCC 471, AIR 1930 All 1, AIR (30) Oudh 1999, AIR 1971 SC 1238, AIR 1964 SC 678, AIR 2000 HP 53, AIR 2000 SC 2408, (1998) 3 SCC 471, (1997) 2 SCC 200, AIR 1930 PC 287, AIR 1986 SC 1912, AIR 1984 Guj. 145, AIR 1999 Delhi 383, 1973 MPLJ 846, AIR 1979 AP 19, AIR 1966 AP 361, AIR 1994 All. 105, AIR 1994 Delhi 345, AIR 1980 SC 1334.

Ravish Agrawal with Abhishek Singh, for the appellant.

R.D. Hundikar, for the respondents.

J U D G M E N T

RAJENDRA MENON, J. :- This is defendant's first appeal against the judgment and decree dated 25.2.99 passed by the Additional Sessions Judge, Burhanpur decreeing a suit for specific performance filed by the respondents/plaintiffs.

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2. Facts, which are not in dispute, necessary for deciding the present appeal are, that the land in dispute is situated in Amagird, Tehsil Burhanpur. Appellant herein, Rameshwarlal, is holding Bhumiswami Rights for the entire land. In Revenue Case No.19/A-2/77-78, he sought diversion of the land for the purpose of using it to establish a colony. The competent authority-exercising jurisdiction under section 172 of the Madhya Pradesh Land Revenue Code, vide order-dated 22.6.1979 granted permission. It may be noted that the application for permission under section 172 of the Code, was accompanied by the relevant documents as per the statutory rule applicable for seeking diversion i.e... Rule 4 and the documents included a tentative map and layout plan of the area. After obtaining diversion, records indicate that the appellant herein applied for a license to undertake colonization. The license was sought in accordance to the requirement of section 24(a) of The Madhya Pradesh Vinirdishta Bhrastha Acharan Nivaran Adhiniyam, 1982 (hereinafter referred to as 'Adhiniyam of 1982'). Under the provisions of section 24 of the Adhiniyam of 1982, license for establishing a colony was necessary.

At this point, it may be noted that under section 31 of the Adhiniyam of 1982, transfer of plots in an area of illegal diversion or illegal colonization is void.

3. However, after obtaining the requisite Colonizer's License, which was granted vide Ex.D/6 dated 31.1.1989, appellant herein applied for permission to develop the area on 3.9.91. Records indicate that on 20.1.1992, permission was received vide Ex.D/8. When the aforesaid process was in progress, it is seen that plaintiffs herein and the appellant entered into an agreement for sale of certain plots measuring 34' x 100' at the rate of Rs.12/- per sqft. The total consideration for the sale was to be Rs.40,800/-. Each of the plaintiffs paid an earnest money of Rs.25,000/- and it was agreed that the balance amount of sale consideration i.e.. Rs.15,800/- shall be paid at the time of registration of the sale-deed, which was to be executed on or before 31.10.1987. These agreements for sale are executed vide Ex.P/1 to P/6 on 7.10.1987. Plaintiffs 1, 3, 4, 5 and 6 i.e... respondents 3, 4, 5 and 6, in this appeal, were parties to the agreement and one of the executant to the agreement Rambhau Mahajan having died, he is represented by his Legal Representatives i.e... son and wife, plaintiff No. 2(a) and (b) - respondents No.2(a) and 2(b) in this appeal.

4. The agreements - Ex.P/1 to P/6 executed for sale of the plots and the colony being developed by the appellant was named as Mohan Nagar Colony. One of the conditions in these agreements for sale was that the appellant herein was to obtain the requisite permission from the Sub-Divisional Officer, as contemplated under the Adhiniyam of 1982, for sale of the plots. It seems that even though the appellant obtained the license - Ex.D/6 and permission for development on 20.1.1992 vide Ex.D/8, for a long period of time, nothing was done even after 31.10.1987 to execute the sale-deeds. According to the plaintiffs,

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they were approaching the defendant, who used to orally inform them that immediately after permission is obtained, the sale-deed would be executed. When nothing was done, records indicate that the plaintiffs on 3.9.93, vide Ex.P/7 to P/12, served notice through their counsel for execution of the sale-deed. It seems that after some negotiations on 1.4.1994, endorsements were made on the back of Ex.P/1 to P/6, to the effect that as no permission to sell the land/plots is obtained, sale would be executed within one month from the date permission is granted by the competent authority.

5. It is the case of the plaintiffs that even though vide Ex.D/12 dated 2.4.1994 and Ex.D/13 dated 16.2.1996, certain permissions were received by the appellant/defendant for transfer of 10 Plots measuring 25350 sqft. The appellant did not take any action for execution of the sale-deed, therefore, again notice – Ex.P/13 was sent on 23.12.94; another notice – Ex.P/14 was sent on 9.8.1995, and when the defendant failed to reply and take action, the suit in question was filed on 29.1.1996. It is the case of the plaintiffs that vide Ex.D/13, permission under the statutory rule was granted for selling 13550 sqft and clubbing together the permission granted on various occasions, the total area for which permission was obtained is 38090 sqft. It was further the case of the plaintiffs that vide sale-deed Ex.P/23 dated 29.3.1996, appellant sold a plot measuring 5520 sqft to one Smt. Shashibala Agrawal in a block known as Block-B, Plot No.2. Appellant also issued a Pamphlet – Ex.P/24, indicating the purpose of establishing a colony and his intention to sell the plots. By bringing on record the documents as indicated hereinabove and by contending that defendant appellant herein is not executing the sale deed, inspite of the fact that he has got permission in various other cases and by bringing on record the requisite map, lay out plan and other documents indicating development of the colony by the appellant, suit was filed for specific performance of the agreements – Ex.P/1 to P/6. It was further pointed out in the plaint that on 16.8.95, appellant/defendant had moved an application for permission to sell 75% plots only, after development, but when nothing was done and even though permission was granted to sell more than 38000 sqft of land and when plots were being sold, plaintiffs filed the suit for specific performance.

6. In the written statement filed, appellant herein raised the following objections:

- (a) His first contention was that the agreements in question – Ex.P/1 to P/6 are not agreements for sale, but are agreements for securing loan and is executed as a security for loan advanced by the plaintiffs to the defendant appellant. It was further his case that as he was unable to repay the loan, hence succumbing to the threat issued by the plaintiffs for filing a suit, he made the endorsements on 1.4.94, at the back of the agreements – Ex.P/1 to P/6. Accordingly, it was the

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contention of the appellant hereinabove that the agreements in question are not agreements for sale at all.

- (b) Objections were also raised with regard to delay in filing the suit and it was contended that the suit is barred by limitation.
- (c) Finally, the third objection raised was that as the agreement is to sell the property for which permission from the competent authority of the State Government is required, no decree for specific performance can be issued, as it would amount to decreeing a suit for performance of an agreement, which is void in view of section 24 and 31 of the Adhiniyam of 1982.

Accordingly, contending that the suit could not be decreed, resistance was made by the appellant.

7. The learned court below on the basis of the pleadings of the parties framed eleven issues:

- (i) The first issue was to the effect as to whether the defendant has entered into an agreement with the plaintiffs for sale of plots bearing Numbers 7 to 12, for a consideration of Rs.40,800/- each, and each of the plaintiffs had paid Rs.25,000/- on the date of execution of the agreements i.e.. 7.10.1987. On the basis of the material that came on record, this issue is answered in favour of the plaintiffs by holding that the agreement was executed.
- (ii) The second issue framed was as to whether the defendant has agreed to execute the sale deed after obtaining permission from the Sub Divisional Officer, Burhanpur on or before 31.10.1987. This issue is also answered in the affirmative by holding it to be established.
- (iii) The third issue framed was as to whether even after 31.10.1987, defendant was assuring the plaintiffs that he shall execute the sale deed. This issue is also answered by holding that the defendant was so assuring.
- (iv) The fourth issue was with regard to endorsement made on the backside of the agreements – Ex.P/1 to P/6, on 1.4.94, for execution of the sale deed within one month of receipt of permission. This issue is also answered in

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the affirmative by holding that such an endorsement was made.

- (v) The fifth issue was to the effect as to whether the defendant was selling the plots to various other persons. It was found that the defendant was so doing.
- (vi) Issue number six was to the effect as to whether the plaintiffs were willing to perform their part of the agreement, by paying the remaining amount of consideration and getting the sale deed executed. The issue is answered by holding that the plaintiffs were willing to do so.
- (vii) The seventh issue was to the effect as to whether the so-called agreements for sale, which are referred to as 'sauda chhitiyon par' was only a security for the loan received. The issue is answered against the defendant by holding that it was not an agreement by way of security for the loan advanced.
- (viii) Issue number eight was as to whether the suit is barred by time. It is held that the suit is within time.
- (ix) Issue number nine was with regard to breach of certain provisions of money lenders act. It is held that no such breach is established.
- (x) Issue number ten was to the effect as to whether the agreement for sale executed on 7.10.1987 is void and cannot be specifically enforced in view of not obtaining permission from the Collector in accordance to the provisions of the Adhiniyam of 1982. The issue is answered by holding that the agreements are not void and it can be enforced.
- (xi) Issue number eleven was with regard to relief and costs.

Evidence was led by the parties and on the basis of the documents, by answering each and every issue as indicated hereinabove, the suit was decreed directing the defendant, appellant herein, to execute the sale-deed within a period of one month and to transfer the land on the basis of the permission already granted by the Collector and if less land than the permission is found to be available for transfer, then the plaintiffs were entitled to damages at the rate of Rs.240/- per sqft of land for the non-executed part.

8. Assailing the aforesaid judgment and decree for specific performance granted, this appeal is filed by the appellant. In this appeal, at the time of hearing,

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the findings recorded by the trial court were assailed with particular emphasis to the findings recorded by the trial court with regard to the agreement being an agreement for sale and the reasons given for negating the contentions of the appellant to the effect that the agreement was only a document executed by way of security for the loan advanced. It was also stated that the suit was barred by time and, therefore, liable to be dismissed and finally much emphasis was placed to the fact that the agreements in question are void in view of section 31 of the Adhiniyam of 1982. This Adhiniyam provides for penalty for breach of its provisions, particularly section 24 and a decree for performance of such an agreement, which is prohibited under law, cannot be specifically enforced.

9. These were the three main grounds urged in this appeal and Shri Ravish Agrawal, learned Senior Advocate appearing for the appellant, taking me through the provisions of the Adhiniyam of 1982, particularly sections 24(a), 27 and 31, emphasized that the agreements to sale is void as no sale or agreements for sale can be executed without permission of the competent authority. Thereafter, referring to section 9 of the Specific Relief Act; section 23 of the Indian Contract Act; and, the meaning of the word 'void' appearing in the Blacks Law Dictionary, it was argued by learned Senior Advocate that specific performance of an agreement, which is void and illegal cannot be granted, as the agreement itself is impermissible under law and an illegal or void contract cannot be enforced by a decree for specific performance. Emphasizing that the appellant had executed the sale deed for the purpose of obtaining loan for treatment of his sick father and the finding recorded by the trial court holding the agreement to be an agreement for sale is a perverse finding, Shri Agrawal, learned Senior Advocate, sought interference into the matter and in support of his contention placed reliance on the following judgments:

- (i) *Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Company*, AIR 1959 SC 589-to canvass his contention that an agreement contrary to provisions of law is unsustainable, being in contravention to the statutory provisions, which prohibit such an agreement.
- (ii) *Sita Ram Vs. Radha Bai and others*, AIR 1968 SC 534 again to canvass his contention that an illegal contract entered into in breach of law cannot be enforced.
- (iii) *Murlidhar Dayandeo Kesekar Vs. Vishwanath Pandu Barde and another*, 1995(2) SCC 549-to substantiate his contention that if an agreement for sale is void, then in view of section 23 of the Contract Act, it cannot be enforced.
- (iv) *K.S. Vidyanadam and others Vs. Vairavan*, 1997(3)

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SCC 1 - which pertains to the principle with regard to time being essence of a contract.

- (v) *Papaiah Vs. State of Karnataka and others*, AIR 1997 SC 2676-to contend that a contract, which is opposed to public policy under section 23 of the Contract Act, cannot be enforced.
- (vi) Finally, he placed reliance on a judgment of the Supreme Court in the case *Tarsem Singh Vs. Sukhminder Singh*, 1998(3) SCC 471, to contend that a void contract cannot be enforced in view of the provisions of section 20 read with 23 of the Contract Act.

Accordingly, on the aforesaid submissions Shri Ravish Agrawal, learned Senior Advocate, sought for interference into the matter and setting aside the judgment and decree.

10. Shri R.D. Hundikar, learned counsel appearing for the plaintiffs, respondents herein, refuted the aforesaid contentions and by referring to the agreements in question - Ex.P/1 to P/6, conduct of the appellant herein in obtaining permissions for colonization, getting the land developed, thereafter obtaining permission from the competent authority and selling more than five plots to various persons, argued that in this case the agreement is not void, but is voidable at the instance of the plaintiff and as permission is granted in most of the cases it is a case where specific performance of the agreement can be granted and he refuted each and every contention advanced by Shri Ravish Agrawal, Shri R.D. Hundikar argued that the agreement is an agreement for sale; defendant has failed to prove that it was only a security for the loan advanced; it was further stated that as the endorsement made in the agreement in the year 1994 amounts to acknowledgement by the defendant, the suit filed within three years thereof is within limitation and further contending that the agreement is not void, but is voidable and specific performance of the same can be granted. Learned counsel emphasized that as decree for specific performance is a discretionary relief granted by the court after considering the principles of equity, it is a fit case where after evaluating the conduct of the appellant in getting permission for some of the plots and selling them, his intention to get enhanced value for the plots in question is apparent and, therefore, decree should be granted.

11. In support of his contention Shri R.D. Hundikar invited attention of this Court to a Full Bench of the Allahabad High Court, in the case of *Dip Narain Singh Vs. Nageshwar Prasad and others*, AIR 1930 Allahabad 1, to draw a distinction between an agreement forbidden by law and an agreement which is only declared to be void; *Munshi Tajammul Husain Vs. Cantonment Board, Lucknow and another*, AIR (30) 1943 Oudh 99, to canvass his contention that

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the agreement is voidable and can be enforced; *Ramesh Chandra Chandiok and another Vs. Chuni Lal Sabharwal (dead) by his Legal representatives and others*, AIR 1971 SC 1238, in which facts similar to the present case were considered and a decree for specific performance granted; *Mrs. Chandnee Widya Vati Madden Vs. Dr. C.L. Katial and others*, AIR 1964 SC 678, to contend that when law requires permission of some authority to transfer property, then a decree for performance subject to obtaining the permission can be granted; *Shri Krishan Swarup Bhatnagar Vs. Shri Chander Mohan Rewal and another*, AIR 2000 HP 53; *Motilal Jain Vs. Smt. Ramdasi Devi and others*, AIR 2000 SC 2408; *Tarsem Singh Vs. Sukhminder Singh*, 1998(3) SCC 471; and, *Sukhbir Singh and others Vs. Brij Pal Singh and others* 1997(2) SCC 200. By placing reliance on the aforesaid judgments, it was argued by Shri Hundikar that in the facts and circumstances of the case and in the light of the principle laid down in the aforesaid judgments, in decreeing the suit the court below has not committed any error warranting interference.

12. Having heard learned counsel for the parties at length and on consideration of the facts and circumstances of the case and on evaluating the legal principles canvassed, the following three questions require consideration now in this appeal:

- (i) Whether the agreements – Ex.P/1 to P/6 are only documents executed for securing the loan granted by the plaintiffs to the defendant and are not agreements for sale?
- (ii) Whether the suit is barred by limitation?
- (iii) In view of the requirement of the Adhiniyam of 1982 and in the absence of sanction from the competent authority i.e., the Collector/Sub-Divisional Officer, Burhanpur, decree for specific performance of the agreements in question can be granted or not?

13. As far as the first contention is concerned, it is the case of the plaintiffs that for the purpose of purchasing the plots in question, the agreements in question were executed, they had advanced an amount of Rs.25,000/- on 7.10.1987, and the remaining amount of sale consideration i.e., Rs.15,800/- was to be paid at the time of execution of the sale deed. By bringing on record certain documents showing obtaining loan from the Life Insurance Corporation of India and by pleading ailment of his father it was the case of the appellant herein that the agreements in question are not agreements for sale, but are only documents evidencing security for the loan advanced. In his statement, defendant Rameshwarlal, who is examined as DW-1, has stated that plaintiffs Dattatraya and Rambhau Mahajan were his friends and he had asked for a loan of Rs.1½ Lacs from them. On this they had asked him to give as security certain plots in

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Mohan Nagar and it was under these circumstances that the agreements, six in number, were executed. However, after evaluating the evidence and material that came on record and after taking note of the aforesaid defence of the defendant, appellant herein, the learned court below has analysed the material and Issue No.(i) and (ii) framed in this regard are answered by taking note of the fact that after obtaining the loan as contended by the appellant in the year 1987, there is nothing to indicate that at any point of time after 1987 upto filing of the suit, the defendant appellant had made any effort to repay the loan or had paid any interest on the amount loaned. By taking note of the circumstances that have come on record with regard to development of the plots, obtaining permission from various authorities for development of the plots, even obtaining permission from the Collector for sale of more than 38,000 sqft of land, sale-deeds executed in more than four cases and after taking note about the fact of development of a colony i.e... Mohan Nagar Colony, on the basis of colonizer's license obtained by the defendant vide Ex.D/6 on 31.1.1989, the contention of the appellant seems to be incorrect. Except for making his oral statement to the effect that the agreements were executed for advancing loan and by way of security, the conduct of the parties particularly the appellant herein, as indicated hereinabove, read alongwith the endorsements made on 1.4.1994 with regard to extension of time to seek permission for sale of the plots, it is very difficult to believe the defence of the appellant. The totality of the circumstances and the manner in which the parties have acted during the period after execution of the agreements on 7.10.1987 till filing of the suit indicates that there is nothing to show that plaintiffs had advanced loan to the defendant appellant and the entire transaction was infact a loan agreement.

14. On the contrary, the conduct of the parties and the material available clearly indicates that it was a transaction for sale of the plots in Mohan Nagar Colony and the finding recorded by the trial court with regard to Issue No.(i) and (ii) in this regard is a proper finding, which is based on material available on record and in this appeal this Court does not find any ground to interfere in the matter. Accordingly, the first question is answered by holding that the agreements in question – Ex.P/1 to P/6, are infact an agreement for sale of certain plots in Mohan Nagar Colony and the contention of the appellant that it was only a document evidencing loan transaction and executed for securing the loan by way of security cannot be accepted.

15. As far as the question of limitation is concerned, the agreements in question were executed on 7.10.1987 and as per the agreements the sale deed was to be executed on or before 31.10.1987. However, the evidence that has come on record indicates that even after 31.10.1987 parties continued to act in pursuance to the agreement and the appellant herein got the license vide Ex.D/6 on 31.1.1989, on 3.9.1991 the defendant sought for permission for development which was granted

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vide Ex.D/8, on 20.1.1992, and when all these activities were continuing and when the sale deeds were not being executed, notice – Ex.P/7 to P/12 were sent on 3.9.93. Evidence available indicates that negotiations took place and on 1.4.1994 an endorsement was made in the agreements in question – Ex.P/1 to P/6, which was signed by appellant Rameshwarlal. The appellant has signed at portions marked 'B-B' and by terming the endorsements to be 'sauda chittiyon par', he has agreed to sell the property within one month of receipt of permission. It is, therefore, clear that even though the agreements initially were to execute the sale-deeds by 31.10.1987, but on 1.4.1994 defendant Rameshwarlal agreed to get the sale-deeds executed within a period of one month of his getting the permission from the competent authority. This endorsement, which is proved in each of the agreements, extends the time fixed for execution of the sale-deeds from 31.10.1987 upto a period of one month from the date of receipt of permission and the suit filed on 29.1.1996 i.e., within three years of extension of the agreement on 1.4.1994, is clearly within limitation and, therefore, on the ground of delay in filing the suit cannot be dismissed. On the contrary, the suit filed within two years of extension made in the agreement on 1.4.94 is within time and, therefore, the second question framed has to be answered by holding that the suit in question was in time and there is no question of it being dismissed on the ground of delay.

16. The third question framed for consideration in this appeal is the most important question, on which much emphasis was made by learned counsel for the parties during the course of hearing.

17. For considering the said question, it is necessary to take note of the provisions of The Madhya Pradesh Vinirdishta Bhrastra Acharan Nivaran Adhiniyam, 1982. The Adhiniyam of 1982 is an Act, which makes provision for prosecuting persons who illegally develop colonies or illegally undertake diversion or use land without permission from the competent authorities. Section 24 of this Act contemplates a provision with regard to obtaining colonizer's license, seeking permission for diversion and thereafter conversion of the land. Section 27 contemplates a provision for punishment for illegal diversion and illegal colonization and section 31 prohibits transfer of land or plots in an area without permission of the competent authority. A transaction or transfer under this section and an agreement to transfer is held to be void. In the present case, it is the case of the appellant that the agreements for sale being without permission is in violation of the statutory provisions and, therefore, it is void and cannot be enforced. Before considering the legal question as canvassed, the conduct of the parties particularly that of the appellant may be taken note of, for it would have some bearing on the question of granting decree for specific performance, as principle of equity will have to be given some consideration in this regard.

18. After execution of the agreement on 7.10.1987, records indicate that appellant had received the license for colonization, he had moved a application for development of the land and permission was also granted to him for sale of certain

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plots. In this regard the aforesaid facts are established if document Ex.D/6 i.e., the license obtained by the defendant on 31.1.1989; Ex.D/8 dated 20.1.1992 permission for development of the land received by the defendant; and, Ex.D/12 dated 6.4.1994 permission to sell 10 Plots in B Wing, are taken note of. Thereafter, again vide Ex.D/13 on 31.1.1996, further permission to sell plots is received. Records indicate that appellant had received permission to sell more than 38,000 sqft of land and he had executed about 5 sale-deeds. Even after 1.4.94, on 6.4.94 defendant had received permission to sell 10 plots vide Ex.D/12. Vide Ex.P/23, 5520 sqft of land was sold to Smt. Shashibala Agrawal. These facts clearly indicate that it is not a case where no permission was being granted for sale of plots in the area in question. On the contrary, it is a case where the defendant had received colonizer's license, for developing the colony known as Mohan Nagar Colony, and he had been receiving permission for selling various plots and infact he had sold various plots out of the permission received by him to sell 38090 sqft. It is not a case where there was total prohibition under law, which prevented the defendant from selling any plot. There is no evidence or material available on record on the basis of which it can be said that permission to sell any particular plot, which formed part of the agreements, is refused. On the contrary, it is a case where the colony is being developed in accordance to the requirement of law and for the purpose of sale of plots, certain permissions were granted and sale affected. It is, therefore, not a case where total sale of plots in the area or development of the colony is prohibited. On the contrary, it is a case where the colony is being developed and there are instances where sale of plots have been made and permission for sale granted. It is only with regard to specific plots indicated in Ex.P/1 to P/6 that permission is not being granted and the reason for the same is not forthcoming. Before the trial court the main case of the defendant was that it is not an agreement for sale at all and when this contention of his had failed, he has come out with a case that he cannot transfer the plots because permission is not being granted by the competent authority. However, the reason specific in nature, for not obtaining permission, for the plots in question covered by agreements – Ex.P/1 to P/6 is not forthcoming and there is no evidence on record to indicate that there is any reason on the basis of which it can be said that there is some legal impediment or prohibition in getting permissions for transfer of the plots in question. On the contrary it seems to be a case where after execution of the agreements, the defendant/appellant for the reasons best known to him was not interested in getting the sale or transfer executed and kept the matter pending even though he was in possession of a license for colonization and records indicate that the process of development of the colony and sale of the plots were in progress. It is this conduct of the defendant which had compelled the trial court to come to a conclusion that the defendant was not interested in getting the agreement performed and was only interested in getting the agreements cancelled so that he can get more amount or enhanced value for the plots.

19. Keeping in view the aforesaid factual aspects of the matter and the conduct

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of the defendant, if the legal principles governing grant of decree for specific performance of such an agreement is evaluated, it would be seen that a decree of the nature prayed for by the plaintiffs can be granted.

20. Shri Ravish Agrawal, learned Senior Advocate, had placed much emphasis on the ground that an agreement prohibited under law and which is void cannot be specifically enforced and, therefore, a decree for specific performance of such an agreement is prohibited.

21. The contention of Shri Ravish Agrawal and the judgments relied upon by him, if scrutinized, would indicate that all the judgments are those which relate to bar created in the matter of enforcing an agreement, which is prohibited under law. In the case of *Waman Shriniwas Kini* (supra), the question before the Supreme Court pertained to certain transfer of property contrary to the provisions of section 15 of the Bombay Hotel and Lodging House Rent Control Act, 1947. Section 15 of the said Act prohibited subletting and it was unlawful for a tenant to assign or transfer his interest in any premises, which was let out to him. Finding an agreement entered into by a tenant assigning his interest in the premises to be contrary to section 15 of the Act, it was held by the Supreme Court that the agreement is unsustainable.

22. Likewise in the case of *Sita Ram* (supra), the question pertain to transfer of certain moveable properties i.e... diamond, gold and pearl jewellery. In the said case, enforcement of a fraudulent agreement and the principle governing the maxim 'In pari delicto potior est conditio defendentis' was taken into consideration and it was held that a court will refuse to enforce an illegal agreement at the instance of a person, who is himself party to the illegality or fraud, but certain exceptions to application of the aforesaid maxim was also laid down in the said judgment.

23. The third case relied upon by Shri Ravish Agrawal, learned Senior Advocate, is the judgment of the Supreme Court in the case of *Murlidhar Dayandeo Kesekar* (supra). This judgment pertains to protecting the rights of the tribal and sale of land allotted to the tribals by the State Government and the principle considered is the right of a tribal, which has to be protected in view of the mandate of Article 14, 21, 38, 39 and 46 of the Constitution of India and it is held that an agreement to sell the land of a tribal is opposed to public policy. The Supreme Court has dealt with such an agreement in the said case.

24. In the case of *K.S. Vidyarnadam* (supra), again relied upon by Shri Ravish Agrawal, the question of limitation and delay and latches in execution of the agreement and seeking specific performance is taken note of. The said judgment speaks about consideration of relevant circumstances and the time limit specified in the agreement and discretion to be exercised in getting the decree executed on the principle of time being the essence of contract. This judgment is also not of any assistance in the facts and circumstances of the present case.

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25. The next case relied upon by Shri Agrawal, learned Senior Advocate, is that of *Papaiah* (supra), where again the question of agreement or transfer for affected alienation of land assigned to a member of the depressed class is taken note of and it is found that such an agreement is opposed to public policy and has the effect of frustrating the mandate under Article 29(b) of the constitution. Alienation of assigned land to the member of the oppressed class is considered and discussed in the aforesaid case.

26. Similarly, the case of *Tarsem Singh* (supra), relied upon by Shri Agrawal pertains to execution and enforceability of an agreement in which certain mistakes have crept in.

27. The aforesaid judgments relied upon by Shri Ravish Agrawal, learned Senior Advocate, and its applicability in the facts and circumstances of the present case has to be evaluated keeping in view the law laid down in the matter of granting a decree for specific performance, even when the agreement contemplates a provision for sale of the land subject to specific permission or 'no objection' from certain Government authorities or agencies. As there are judgments directly on these questions, the general principles laid down in the cases referred to by Shri Ravish Agrawal, learned Senior Advocate, as indicated hereinabove, are required to be analysed in the backdrop of the judgments specific in nature.

28. In the case of *Dip Narain Singh* (supra) rendered by the Full Bench of the Allahabad High Court, conveyance of property and distinction between agreement forbidden by law and agreement declared to be void are taken note and the Full Bench in the aforesaid case has laid down the principle that if a void agreement has been carried out and consideration is passed, then the promisor may not be in equity allowed to go back upon it without restoring the benefit which he has received and in such cases if the promisee comes to the court, it is held that enforcement of such an agreement can be made with the help of a court of law.

29. Similarly, in the case of *Ramesh Chandra Chandiok* (supra), relied upon by Shri Hundikar, the Supreme Court considered the question of granting a decree for specific performance with regard to transfer of plot, which required obtaining prior permission of the Rehabilitation Ministry of the Government of India, and after evaluating somewhat similar circumstances that was existing in the said case and after taking note of certain principles laid down in the English Law, it is held that the relief of specific performance is a discretionary relief and a decree was granted subject to performance of the condition of obtaining sanction.

30. Similarly, the judgment in the case of *Mrs. Chandnee Widya* (supra) relied upon by Shri Hundikar, lays down the same principle: "After taking note of a judgment of the Privy Council, in the case of *Motilal Vs. Nanhelal Ghasiram*, AIR 1930 PC 287". In the case of *Mrs. Chandnee Widya* (supra), the contract was for sale of a house on a plot granted by the Government, one of the terms in

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the contract was that the vendor shall obtain necessary permission from the Government before the sale. The vendor made the application, but withdrew the same, when specific performance of the contract was sought for, an objection was raised that the contract is not enforceable as permission from the Government was not received, after taking note of the judgment in the case of *Motilal* (supra), rendered by the Privy Council, it has been held by the Supreme Court that there is no substance in the contentions raised by the objecting defendant and finding the plaintiff to be always ready and willing to perform their part of the contract and defendant willfully refusing to perform his part, decree for specific performance was granted subject to sanction by the Chief Commissioner. This judgment in the case of *Mrs. Chandnee Widya* (supra) is followed in many other cases.

31. In the case of *Rojasara Ramjibhai Dahyabhai Vs. Jani Narottamdas Lallubhai (dead by LRs) and another*, AIR 1986 SC 1912, the judgment of the Privy Council in the case of *Motilal* (supra) is considered and after taking note of the principle laid down therein, the question of granting decree for specific performance with regard to transfer of land, which warranted obtaining permission from government authorities was taken note of and in paragraphs 13 and 14, the matter is so dealt with:

"13. In this context, reference may be made to the decision of the Privy Council in *Motilal v. Nanhelal Ghasiram*, (1930) 57 Ind App 333: (AIR 1930 PC 287). There, the facts were these. In that case, the plaintiff Mst. Jankibai entered into an agreement to purchase from Raibahadur Seth Jiandas of Jabalpur four annas proprietary share of Mauja Raisalpur together with the sir and khudkast lands appurtenant thereto, with cultivating rights in the sir lands. The property was subject to the provisions of the Central Provinces Tenancy Act, 1920. She filed a suit for specific performance of the said contract. The Privy Council held that the contract was for a transfer of the sir lands without reservation of the right of occupancy, and that the sanction of the Revenue Officer to the transfer was necessary under S. 50(1) of the Act, which was in these terms:

"S.50(1): If a proprietor desires to transfer the proprietary rights in any portion of his sir land without reservation of the right of occupancy specified in S. 49, he may apply, to a revenue-officer and, if such revenue-officer is satisfied that the transferor is not wholly or mainly an agriculturist, or that the property is self-acquired or has been acquired within the twenty years last preceding, he shall sanction the transfer."

14. It was contended before the Privy Council that a decree for specific performance of the agreement of sale could not be made,

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because such performance would necessitate an application by or on behalf of the vendor to the Revenue Officer for sanction to transfer the cultivating rights in the sir land, and that the Court had no jurisdiction to require the vendor to make such an application. In repelling the contention, the Privy Council observed that in view of their construction of the agreement, namely, that the vendor agreed to transfer the cultivating rights in the sir land:

"(T)here was, in their Lordships' opinion, an implied covenant on the part of the vendor to do all things necessary to effect such transfer, which would include an application to the Revenue Officer to sanction the transfer."

It was further observed that it was not necessary for their Lordships to decide whether in that case the application for sanction to transfer must succeed, but that it was material to mention that no facts were brought to their Lordships' notice which would go to show that there was any reason why such sanction should not be granted. After making the said observations, the Privy Council held that in those circumstances the Court had jurisdiction to enforce the contract under the Specific Relief Act, 1877 and Order 21, R. 35 of the Code of Civil Procedure, 1908 by a decree ordering the vendor to apply for sanction and to execute a conveyance on receipt of such sanction. The decision of the Privy Council in Motilal v. Nanhelal Ghasiram, supra, therefore is an authority for the proposition that if the vendor agrees to sell the property which can be transferred only with the sanction of some Government authority, the Court has jurisdiction to order the vendor to apply to the authority within a specified period, and if the sanction is forthcoming to convey to the purchaser within a certain time. See also: *Mrs. Chandee Widya Vati Madden v. Dr. C. L. Katial*, (1964) 2 SCR 495: (AIR 1964 SC 978) and *Ramesh Chandra Chandiok v. Chuni Lal Sabharwal*, (1971) 2 SCR 573: (AIR 1971 SC 1238) where this Court following the Privy Council decision in *Motilal v. Nanhelal Ghasiram's case*, supra, reiterated the same principle." *(Emphasis supplied)*

It is, therefore, clear from a complete reading of the aforesaid judgments of the Supreme Court that even if the law warrants obtaining of permission from certain authorities with regard to transfer, specific performance of the contract can be granted and the prayer cannot be rejected only on the ground that the sanction is not available.

32. A Full Bench of the Gujarat High Court, in the case of *Shah Jitendra Nanlal Vs Patel Lallubhai Ishverbhai, Ahmedabad and others*, AIR 1984

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GUJ 145, considered the question of granting a decree for specific performance, where it was urged that the transfer is prohibited by certain statutory provisions like the Gujarat Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972; The Urban Land (Ceiling and Regulation) Act, 1976 etc. In the said case also, it was found that under section 53 of the Gujarat Vacant Land in Urban Areas (Prohibition of Alienation) Act, a contract or agreement or transfer was declared as void. However, there was a provision for seeking exemption from permission for such transfer. When the matter was pending, the law was amended. However, the principle of granting a decree subject to permission was approved by the Gujarat High Court in the said case. In paragraphs 11 and 13, after considering the judgment in the case of *Bai Dosabai* (supra), the matter is so dealt with:

“11. So long as the provision declaring the transfer under Section 5(3) as void is subject to the right to move for exemption, obtain exemption and transfer the property, the power of an owner of vacant land in excess of the ceiling limit to 'alienate' such land is dormant in him and such power could be exercised by him in case he seeks exemption satisfies the Government that the grounds for exemption exist and obtains such exemption. That being the case, a decree cannot be defeated on the ground that 'transfer' inter parties would not be possible. The possibility of obtaining exemption survived till the notification under Section 10(3) of the Act is issued. That being the situation, until then, a plaintiff seeking specific performance cannot be told that the terms of the contract cannot be fulfilled. Once it is said so, the plaintiff loses his right to get a decree for specific performance, though, invoking the provisions of the very Act, based on which the plaintiff was told that he could not get conveyance of the property agreed to be sold to him, the owner of excess land obtained exemption and continues in possession of property and perhaps even alienates it later. We see no reason either in law or in logic to countenance such a situation. There is nothing prohibiting a decree being passed for specific performance, with, of course, such alternative remedies as may be called for in a situation where that decree may become inoperative. The decree for specific performance may be made conditional on the exemption under Section 20 (1)(a) or (b) operating. Of course, it is not for us in this reference to envisage how safeguards should be built in, in such a decree. Resourcefulness, of course, must necessarily find answer to possible situations.

13. In this view, in answer to the second question referred to us we hold that a conditional decree for specific performance subject

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to exemption being obtained under Section 20 of the Urban land (Ceiling and Regulation) Act 1976 (Act No.33 of 1976) is permissible. As we have said earlier, we do not propose to answer the first question as it may not be necessary. The case will be sent back to the Division Bench for disposal in accordance with the decision herein and in accordance with law."

33. Again, the Delhi High Court in the case of *Raghunath Rai and another Vs. Jageshwar Prashad Sharma and another*, AIR 1999 Del 383, considered the case of agreement to sell certain property, which required obtaining 'No Objection Certificate' and income tax clearance. After taking note of the principles laid down by the Privy Council in the case of *Motilal* (supra); by the Supreme Court in the case of *Mrs. Chandnee Widya* (supra); and, various other cases, in paragraph 17 the principle was so crystallized:

"17-In the agreement to sell defendant had agreed to do certain acts and things. There is mostly always an implied covenant on the part of the vendor to do all things necessary to give effect to the agreement, including the obtaining of the permission or clearance for the transfer of the property. The law is well settled that if the vendor agrees to sell the property which can be transferred only with the sanction of some Government authority, the Court has jurisdiction to order the vendor to apply to such authority within a specified period, and if the sanction is forthcoming to convey the property to the purchaser within a certain time: (See- *Motilal Vs. Nanhelal*, AIR 1930 PC 287; *Mrs. Chandnee Widayavati Madden V. Dr. C.L. Katial*, AIR 1964 SC 978; and *Rojasara Ramjibhai Dahyabhai Vs. Jani Narottamdas Lallubhai* (dead by LRs), AIR 1986 SC 1912."
(Emphasis supplied)

34. A Division Bench of this Court in the case of *Nimar Industrial Corporation Private Limited, Khandwa Vs. M.P. Electricity Board, Jabalpur*, 1973 MPLJ 846, has considered the question of a contract to sell the land without the consent of the Government and the question of granting a decree for specific performance after considering the provisions of sections 10 and 23 of the Contract Act and section 21 of the Specific Relief Act, it has been held that if a lease of land is transferred without consent of the government, the only effect of the requirement of consent being passed would be that a decree for specific performance if passed, has to be subject to approval of the State Government.

35. It is, therefore, clear on an analysis of the principles laid down by the Supreme Court and various High Court in the matter of granting decree for specific performance in cases where consent, sanction or permission of any officer, authority or government is required. The principle laid down is that if a condition

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is laid down that the transferor is bound to do everything to give effect to the contract; specific performance can be obtained with a direction to the transferor to obtain the required consent or permission. The general principle is that until and unless the transaction itself is unlawful, it may be enforced directing the defendant to take such steps as are necessary for affecting the contract. Reference may be made to a judgment of the Andhra Pradesh High Court, in the case of *Somisetti Ramanaiah Vs. The District Supply Officer, Chittoor*, AIR 1979 AP 19. The principle laid down by the Privy Council in the case of *Motilal* (Supra) and by the Supreme Court in the cases of *Mrs. Chandnee Widya* (supra) and *Rojasara Ramjibhai Dahyabhai* (supra), all together if considered would indicate that the principle laid down is that if the vender has agreed to sell property, which can be transferred only with the sanction of some government authority, the Court has jurisdiction to order the vendor to apply to the authority and if sanction is not forthcoming, to convey to the purchaser the same and on the ground that the sanction is not available, decree for specific performance can not be refused. It is held in most of the cases that when permission from some authority is required to be obtained, obtaining of the same is not a condition precedent for grant of decree for specific performance, if after grant of decree permission can be obtained. The conditional decree for specific performance can be granted making it subject to obtaining permission or exemption as contemplated in the statute. It is held that a relief can be moulded to such an effect that defendant is directed to obtain permission or consent. It has been the consistent view that on the ground of non-availability of consent or permission a defendant cannot avoid such an agreement. There are series of judgments in this regard by various High Courts, which have followed the principles laid down in the case of *Mrs. Chandnee Widya* (supra); *Motilal* (supra), and some of the judgments in this regard are *Khan Bahadur C.B. Taraporwala and another Vs. Kazim Ali Pasha and others*, AIR 1966 AP 361; *Indra Prasad Saxena Vs. Chaman Lal Malik*, AIR 1994 ALLAHABAD 105; and, *Shri Rajesh Agrawal Vs. Shri Balbir Singh and another*, AIR 1994 DELHI 345.

36. If the case in hand is analysed in the backdrop of the aforesaid principles, it would be seen that a decree for specific performance can be granted subject to a rider being placed directing the appellant herein to get the permission and, therefore, the contention of Shri Ravish Agrawal, learned Senior Advocate, to the effect that no decree for specific performance can be granted, cannot be accepted. As already indicated hereinabove the judgments relied upon by Shri Ravish Agrawal, deal with prohibition under the law in the matter of execution of the agreement, however, when the question of specific performance of a contract of the nature involved in the present case is evaluated, this Court is of the considered view that the judgments relied upon by Shri Agrawal may not be applicable in the facts and circumstances of the present case.

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37. At this juncture, this Court has to take judicial notice of certain additional facts. According to the appellant herein the transaction is hit by the prohibition contained in section 31 of the Adhiniyam of 1982. It is seen that the provisions of Sections 24 to 32 of the Adhiniyam of 1982 is incorporated in Chapter 8 of the Adhiniyam of 1982 and by M.P. Act No.6 of 1988 w.e.f. 31.8.1998, the entire Chapter i.e... from Sections 24 to Section 32 is omitted. If that be so, the changed circumstances brought about will have to be taken note of and if the judgment rendered by the Supreme Court in the case of *Bai Dosabai Vs. Mathurdas Govinddas and others*, AIR 1980 SC 1334, is taken note of, it would be seen that the following principle is laid down with regard to law governing the consideration of changed circumstances in the event of a pending appeal. In paragraph 14, the following principle is laid down by the Supreme Court:

“14. The question for our consideration is what is the effect of the Urban Land (Ceiling & Regulation) Act, 1976 on the decree passed by the High Court. While it is true that events and changes in the law occurring during the pendency of an appeal are required to be taken into consideration in order to do complete justice between parties and so that a futile decree may not be passed. It should be so moulded as to accord with the changed statutory situation.”

38. This judgment of the Supreme Court is considered by the Full Bench of the Gujarat High Court, in the case of *Shah Jitendra Nanlal* (supra) also.

39. If the case in hand is analysed in the backdrop of the aforesaid principles, it would be seen that the contentions advanced by Shri Ravish Agrawal to the effect that no decree can be granted for enforcement of a void agreement cannot be accepted as a universal principle, in certain cases a decree for specific performance can be granted, particularly when illegality or breach of law pointed out in the agreement is such that it can be made good or cured by certain subsequent action, like obtaining permission or sanction or approval from the competent authority as envisaged under the statutory provisions and a decree for specific performance, conditional in nature, can be granted to the plaintiffs with a rider for obtaining permission from the competent authority. In the present case, under the changed circumstances, there is nothing before this Court on the basis of which, as on date it can be held that permission or sanction of some authority is required after changes brought about in the light of the Amending Act, M.P. Act No.6 of 1988 w.e.f. 31.8.1998.

40. As already indicated hereinabove, by amending Act No.6 of 1988 w.e.f. 31.8.1998, provisions of sections 24 to 32 appearing in Chapter VIII of the Adhiniyam of 1982, is deleted and the statement of object and reason indicates that after coming into force of the M.P. Housing Policy 1995 and due to involvement of the local bodies, provisions have been made in the M.P. Municipal Corporation

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Act, 1956, The M.P. Municipalities Act, 1961 and the M.P. Panchayat Raj Adhiniyam 1993, regarding regulation for establishment of colonies in urban and rural areas on the lines contained in Chapter VIII of the Adhiniyam of 1982. Because of the aforesaid reason, the entire Chapter VIII, containing sections 24 to 32, have become redundant and, therefore, the amendment. It is, therefore, clear that during the pendency of these proceedings, infact even before the judgment and decree impugned was passed on 25.2.99, the provisions of the Adhiniyam were not required to be complied with and the specific provisions under the M.P. Municipalities Act and M.P. Municipal Corporation Act, which warrants obtaining of permission and its consequences, have not been brought to the notice of this Court and, therefore, it is not known as to which statutory provision is to be complied with now in the matter. This change has to be taken note of and after considering this change, the judgment and decree has to be passed in a manner so as to do substantial justice to the parties. If the judgment and decree passed by the court below in the present case is analysed, it would be seen that the learned court below has found that permission is already available with the appellant and, therefore, decree is granted to execute sale-deeds to the extent permission is available and thereafter pay to the plaintiffs compensation @ Rs.240/- per sqft for the less land transferred. This decree was passed in the year 1999, more than 10 years have passed and in all probability as the colony was being developed, more permission would have been granted. Considering these factors and taking note of the totality of the circumstances and the legal principles, as indicated hereinabove, including the change in the circumstances, this Court does not find any reason to interfere with the decree granted by the trial court. The decree granted is just and reasonable and does not warrant any interference.

41. Accordingly, the decree granted is confirmed and it is directed that on the basis of the permission already granted, not only till the date of the judgment and decree passed by the trial court, but also on the basis of further permission granted till date, sale-deeds be executed in terms of the agreements – Ex.P/1 to P/6, and in case the permission falls short of the area to be transferred, then compensation as directed by the learned court below alongwith interest @ 8% per annum from the date of agreements – Ex.P/1 to P/6, till payment is made, be paid to the plaintiffs/respondents.

42. Appeal stands dismissed with the aforesaid modification to the decree passed. Cost on parties.

Appeal dismissed.

ORIENTAL INSURANCE CO. LTD. Vs. KRISHNA DEVI

I.L.R. [2010] M. P., 992

APPELLATE CIVIL*Before Mr. Justice Sanjay Yadav*

8 January, 2010*

ORIENTAL INSURANCE CO. LTD.

... Appellant

Vs.

KRISHNA DEVI & ors.

... Respondents

Workmen's Compensation Act (8 of 1923), Section 4 - Onus - Deceased was employed as driver of tractor owned by father - Commissioner on the basis of positive evidence led on behalf of the claimant regarding the deceased being in the employment of father awarded compensation - Held - The onus was thus on the insurance company to have proved the fact that deceased was not in the employment of father - No evidence brought on record to that effect - A presumption can not be drawn that the son could not have been in the employment of his father - Appeal dismissed. (Para 8)

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 4 - भार - मृतक पिता के स्वामित्व के ट्रैक्टर पर चालक के रूप में नियोजित था - मृतक पिता के नियोजन में था इस सम्बन्ध में दावेदार की ओर से पेश सकारात्मक साक्ष्य के आधार पर आयुक्त ने प्रतिकर अधिनिर्णीत किया - अभिनिर्धारित - ऐसी स्थिति में बीमा कम्पनी पर यह भार था कि इस तथ्य को साबित करे कि मृतक पिता के नियोजन में नहीं था - तदर्थक कोई साक्ष्य अभिलेख पर नहीं लायी गयी - यह उपधारणा नहीं की जा सकती कि पुत्र अपने पिता के नियोजन में नहीं हो सकता था - अपील खारिज।

Cases referred :

AIR 2007 SC 2907.

*Amrit Ruprah, for the appellant.***ORDER**

SANJAY YADAV, J. :-Aggrieved of the award dated 30-10-2009 by Commissioner, Workmen's Compensation cum Labour Court, Shahdol, the appellant/ non-applicant, Insurance Company prefers this appeal under section 30 of the Workmen's Compensation Act, 1923.

2. The brief facts giving rise to the claim application before Commissioner, Workmen's Compensation by the respondents No. 1 and 2, widow and the mother of deceased Dharma Prakash Pandey are that on 23-1-2003, the deceased while employed as Tractor Driver in the employment of respondent No. 3, died when the tractor bearing registration No. M.P. 18/9108 which he was driving turned turtle. The tractor was insured with the appellant/respondent.

3. In a claim by respondents No. 1 and 2, it was stated that the deceased immediately after his marriage had separated from father and earning his livelihood

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as driver of the tractor which belonged to his father. The deceased was having a valid licence of driving.

4. The Insurance Co., appellant herein, denied the allegations regarding relationship of an employer and employee between father and son and father denied the information about the accident by respondent No. 1, the owner. The appellant/respondent also disputed age of the deceased, which according to them was 33 years and not 27 as claimed. Insurance of the vehicle was also denied.

5. The Commissioner Workmen's Compensation allowed the claim application by awarding a sum of Rs. 3,97,507/- to be paid by the appellant/Company within forty days failing which it was ordered that they will be liable for 30% penalty.

6. The appellant/Company questions the legality of award on the following substantial questions of law :

(i) Whether in the absence of independent and convincing evidence, a son can be said to be a 'workman' under the employment of his father?

(ii) Whether a presumption of collusion and malafides is there when the deceased 'workman' and the employer are near relatives like father and son, husband and wife etc.?

(iii) Whether the finding of deceased being in the employment of his own father being without any evidence is sustainable in law?

(iv) Whether in the absence of workman-employee relationship, Commissioner for Workmen's Compensation has any jurisdiction to entertain claim application or not?

7. The appellant has thus set up this appeal under section 30 of the Act of 1923 on the ground that in order to get a claim, a false case of employer and employee has been set up by the widow and mother of the deceased in collusion with father, owner of the tractor.

8. The onus was thus on the appellant to have proved the fact that deceased was not in the employment of the father. No evidence seems to have been brought on record to that effect. On the contrary the Commissioner, Workmen's Compensation on the basis of positive evidence led on behalf of the claimant regarding the deceased being in the employment of respondent No.1. Merely because respondent No. 1 and deceased are father and son a presumption cannot be drawn that the son could not have been in the employment of his father. Though an assistance is being sought for by the appellant from the judgment in *Gottumukkala Appaia Narasimha Raju v. National Insurance Company Ltd.* (AIR 2007 SC 2907), that was a case wherein the owner of the tractor, being wife of the deceased, raise a contention that she and her husband had been living

9. In the case at hand there is a specific finding that the deceased was employed as driver to drive the tractor owned by respondent No. 1. The Commissioner, Workmen's Compensation held :

प्रकरण में प्रत्युत आवेदक साक्षी कमांक 1 प्रभावती पाण्डेय उम्र 67 वर्ष की साक्ष्य

की अनुसार वह स्‍व0 धर्मप्रकाश पाण्डेय की मां है एवं श्रीमती कृष्‍णा देवी की स्‍व0 धर्मप्रकाश पाण्डेय की विवाहित पत्‍नी होने बताया है। यह भी कथन किया है कि उक्त पुत्र शादी के कुछ समय बाद से ही अपने पिता से अलग होकर स्‍वयं की पत्‍नी एवं साक्षी के साथ रहने लगा। वर्ष 2002 में आर्थिक परेशानी के कारण उक्त पुत्र ने आवेदक कमांक 1 के यहां इंद्रावर की नौकरी की दिनांक 23.10.03 को मूलक पुत्र आवेदक क0 1 का टेक्‍टर नंबर एम0 पी0 18/9108 दूल्हा नंबर एम0 पी0 18/9109 चलते हुए खाद लेने जा रहा था तब पड़वड़ी में टेक्‍टर दुर्घटनाग्रस्‍त होकर पलट गया जिसमें धर्मप्रकाश पाण्डेय की मृत्यु गंभीर घोटों के कारण हुई। दुर्घटना की सूचना 23.10.03 को ही पुलिस व आवेदकगण को दी गयी। प्रकरण में साक्षी ने मां इन्‍टीमेशन प्रमाणित प्रतिलिपि पी/1, नक्‍शा पंचायतनामा पी/2, एक, आर्. आर्. प्रमाणित प्रतिलिपि पी/3, पोस्‍टमार्टम रिपोर्ट पी/4, मूलक का मृत्यु प्रमाण पत्र पी/5 जिसकी छाया प्रति पी/5, "सी.", मूलक का डाईविंग लाइसेंस पी/6 छायाप्रति पी/6 "सी."। आवेदक रामप्रकाश पाण्डेय द्वारा दिया गया प्रमाण पत्र पी/7 प्रस्तुत किया है।

आवेदक साक्षी कमांक 2 कृष्‍णा देवी आयु 30 वर्ष पत्‍नी स्‍व0 धर्मप्रकाश पाण्डेय ने स्‍वयं के कथन में स्‍वयं की धर्मप्रकाश पाण्डेय की पत्‍नी बताया है तथा श्रीमती प्रभावती पाण्डेय को स्‍व0 धर्मप्रकाश पाण्डेय की मां तथा स्‍वयं की सास होने बताया है।

उक्त साक्षी ने यह बताया है कि उसके प्रति आवेदक क0 1 के अधीन उपर्युक्त दुर्घटनाग्रस्‍त टेक्‍टर पर डाईवर के पद पर कार्यरत थे व उपर्युक्त दुर्घटना में टेक्‍टर पलट जाने से गंभीर घोटों के कारण उसकी मृत्यु हो गयी। इस साक्षी ने आवेदक क0 के साक्ष्य का समर्थन किया है।

आवेदक क0 1 साक्षी ने अपने कूट परीक्षण में बताया है कि उनका पुत्र शादी के 2 साल ही अलग हो गया था उसके साथ उसकी पत्‍नी व साक्षी खुद रहती थी। साक्षी ने वेतन रजिस्‍टर डी/1 में स्‍वयं पुत्र के हस्ताक्षर अ से अ ब से ब, स से स, द से द, ई से ई, स्‍वीकार किया है उक्त साक्षी ने अपने प्रति परीक्षण में स्‍वीकार किया है कि उनके प्रति रामप्रकाश की मृत्यु लगभग 2 वर्ष पूर्व हो चुकी है। उक्त साक्षी ने प्रति परीक्षण में यह भी स्‍वीकार किया है कि वर्ष 02 में उनके टेक्‍टर की शिव कुमार केवट चलाना था शुरू में उसका पुत्र जब टेक्‍टर आया जब डाईवरी नहीं जानता था। उक्त साक्षी ने पी/1 पर अ से अ अपने प्रति के हस्ताक्षर होने स्‍वीकार किया है।

आवेदक साक्षी कमांक 3 शिव कुमार ने भी अपनी साक्ष्य में बताया है कि आवेदक

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कं 1 ने उसे उनका टेक्टर चलाने के लिए जनवरी 02 से जुलाई 02 तक नियोजित किया था। टेक्टर कृषि कार्य के लिए चलाया जाता था। अगस्त 02 में कुछ दिन काम करके उसने नौकरी छोड़ दी थी उसके पश्चात रामप्रकाश पाण्डेय ने स्वयं के पुत्र धर्मप्रकाश को जो अलग से रहता था धर्मप्रकाश को ड्राइवर के पद पर रख लिया था। शादी के बाद से ही अपने पिता से अलग हो गया था तथा अपनी पत्नी व मां के साथ रहता था। उसकी मृत्यु अनावेदक कं 0 1 का टेक्टर चलाते हुए खाद ले जाते समय ग्राम पड़खुड़ी के पास टेक्टर पलट जाने से हो गयी। साक्षी ने डी/1 वेतन रजिस्टर पर एफ से एफ भाग पर स्वयं के हस्ताक्षर होना स्वीकार किया है। उक्त रजिस्टर पर उक्त साक्षी के हस्ताक्षर हैं इसके अतिरिक्त धर्मप्रकाश के हस्ताक्षर भी टेक्टर ड्राइवर के रूप में द से द और स से स और ई से ई हैं। उक्त रजिस्टर पर रसीदी टिकिट पर धर्मप्रकाश के हस्ताक्षर हैं उक्त रजिस्टर यह दर्शाता है कि धर्मप्रकाश मृतक अनावेदक कं 0 1 के अधीन टेक्टर ड्राइवर के रूप में उक्त रजिस्टर में दर्शायी गयी अवधि में कार्यरत था एवं कार्य करते हुए उसने वेतन भी प्राप्त किया है।”

10. Section 30 of the Act of 1923 provides that its only substantial question of law which facilitates the maintainability of appeal. It stipulates :

“ 30. Appeals. - (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely :

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(aa) an order awarding interest or penalty under Section 4-A;

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees:

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Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties.

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of Section 5 of the Limitation Act, 1963 (36 of 1963), shall be applicable to appeals under this section."

11. In the case at hand the appellant raises a question as to whether a son can be in an employment of a father, the owner of the vehicle. The question as proposed emanates from the presumption that a son cannot be in the employment of a father; this extreme proposition has no foundation.

12. In the result appeal fails and is hereby dismissed.

Appeal dismissed.

I.L.R. [2010] M. P., 996

APPELLATE CIVIL

Before Mr. Justice Sanjay Yadav

25 January, 2010*

SHYAMLAL & anr.

... Appellants

Vs.

MADHU & ors.

... Respondents

Motor Vehicles Act (59 of 1988), Section 166 - Award - Determination of compensation - Deceased 16 years of age - Tribunal holding that deceased was not an earning member and awarded minimum compensation of Rs. 50,000 - Held - Deceased being 16 years of age and unmarried, 50% of the notional income to be the loss of annual dependency - Multiplier of 18 applied - Loss of total dependency comes to $7500 \times 18 = \text{Rs. } 1,35,000 + \text{Rs. } 10,000$ granted towards conventional heads. (Para 6)

मोटर यान अधिनियम (1988 का 59), धारा 166 - अधिनिर्णय - प्रतिकर का अवधारण - मृतक की आयु 16 वर्ष - अधिकरण ने अभिनिर्धारित किया कि मृतक उपार्जक सदस्य नहीं था और रु. 50,000 का न्यूनतम प्रतिकर अधिनिर्णीत किया - अभिनिर्धारित - मृतक 16 वर्ष का और अविवाहित होने से, वार्षिक आश्रितता की हानि कल्पित आय का 50 प्रतिशत होगी 18 का गुणक

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लागू किया गया - सम्पूर्ण आश्रितता की हानि $7500 \times 18 = \text{रु. } 1,35,000 + \text{रु. } 10,000$ परम्परागत शीर्ष हेतु प्रदान किये गये।

Cases referred :

(1996) 4 SCC 362, 2005 ACJ 99, (2009) 6 SCC 121.

Prashant Baderiya, for the appellant.

Ashish Rawat, for the respondent No.2.

Jayant Nikhra, for the respondent No.3.

J U D G M E N T

SANJAY YADAV, J. :- Present appeal is against the award dated 23.4.2007 passed by Motor Accident Claims Tribunal, Balaghat in Claim Case No. 25/2006, whereby Claims Tribunal allowed the Claim Petition by the appellants and awarded the sum of Rs.50,000/- in lieu of death of Naresh, aged 16 years, who died in an accident on 20.4.2005 when the tractor bearing registration No. MP 05-M-0189 in which he was traveling turned turtle. The tractor was allegedly driven rashly and negligently by respondent No. 2. The Claims Tribunal holding that the deceased was not an earning member did not apply the multiplier and awarded the minimum compensation of Rs.50,000/-.

2. In the present appeal only quantum of compensation is being questioned, therefore, the factum of accident, the age of deceased and the fact that he died due to accident which took place on 20.4.2005 are taken to be admitted.

3. The appellants claimants question the quantum of compensation on the ground that the Claims Tribunal committed an error by not properly assessing the income of the deceased and by applying wrong multiplier. Reliance is placed on the judgment rendered by *U.P. State Road Transport Corporation Vs. Trilok Chandra and Ors.* [(1996) 4 SCC 362] and *Manju Devi and another Vs. Musafir Paswan and another*, (2005 ACJ: 99) to bring home the submission that, maximum multiplier ought to have been adopted by taking the notional income into consideration.

4. In *Trilok Chand* (supra) the deceased Premchand aged about 26 years met with a fatal accident on 1.8.1977. In a Claim for compensation, the Claims Tribunal taking his earning capacity at Rs.300/- per month, estimated that he spent Rs 200/- per month on his family members and fixing life expectancy at 60 years, the Tribunal deducted 36 years and held that family was deprived of his earning for 24 years. The compensation was worked out at Rs.57,600/- ($200 \times 12 \times 24$). The amount was thereafter raised to 81,600/-, by applying multiplier of 24 years purchase factor. In the background of this fact their Lordships were pleased to observe.

5. In *Manju Devi and another Vs. Musafir Paswan and another* (supra) their lordships were pleased to observe:

"2. In the case of *U.P. State Road Trans. Corpn. V. Trilok Chandra*, 1996 ACJ 831 (SC), it has been held by this Court that

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there should be no departure from the multiplier method on the ground that payment being made is just compensation. It has been held that the multiplier method must be accepted method for determining and ensuring payment of just compensation as it is the method which brings uniformity and certainty to awards made all over the country. In view of this authority, it will have to be held that the award of compensation had to be made by the multiplier method.

3. As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-.

4. We accordingly modify the award to be in a sum of Rs.2,25,000 with interest as awarded. The appeal stands disposed of accordingly. No order as to costs.”

6. Recently, in *Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another* (2009) 6 SCC 121, it has been observed by their Lordships:

“19 To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following well-settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and the period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers, with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

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The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the "loss of dependency" to the family.

Thereafter, a conventional amount in the range of Rs.5000/- to Rs.10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5000 to 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) should also be added.

Furthermore in respect of question regarding deduction for personal and living expenses their Lordships were pleased to observe

"31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent (s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father."

Regarding multiplier it has been held

"41. Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas set out in Column (2) of the table above; some follow the multiplier with reference to Trilok Chandra set out in Column (3) of the table above; some follow the multiplier with reference to Charlie set out in Column (4) of the table above; many follow the multiplier given in the second column of the table in the Second Schedule of the MV Act (extracted in Column (5) of the table above; and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation set out in Column (6) of the table above. For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in Column (2) of the Second Schedule

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to the MV Act or 15 as per the multiplier actually adopted in the Second Schedule to the MV Act. Some tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163-A of the MV Act. In cases falling under Section 166 of the MV Act, Davies method is applicable.

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie, which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

Thus, keeping in view the law above and the facts of present case, the deceased being 16 years of age and unmarried, therefore, by taking into consideration 50% of the notional income to be the loss of annual dependency and by applying multiplier of 18, the loss of total dependency comes to Rs. 7500 X 18 = Rs.1,35,000/- and by adding Rs.10,000/- towards conventional head, the total compensation comes to Rs.1,35,000 + Rs.10,000/- = Rs.1,45,000/-. The Tribunal has already awarded a sum of Rs.50,000/- and after deducting the same, the amount which appellant will now be entitled for would be Rs.95,000/-. The appellant would be entitled for interest @ 6 % on the enhanced amount from the date of appeal. The entire enhanced amount and interest accruing thereon should be deposited in a fixed deposit for a term of Rs.7 ½ years with Nationalized Bank.

7. Furthermore, Tribunal on finding that the Tractor was used for carrying matrimonial goods, other than the purpose for which it was insured, i.e., agriculture purpose, exonerated the Insurance Co. from the liability to pay. Against this finding cross-objection is filed by the owner. It is contended that Claims Tribunal grossly erred in holding that the Insurance Policy was an agriculture package policy. It is urged that the policy was a general policy and covered third party risk and since the deceased was a gratuitous passenger, his death ought to have been indemnified by the Insurance Co.

8. The facts on record, however, do not support the objections. The Insurance Co. examined its Branch Manager, D.W-2, who verified the insurance policy (Ex. D-1) stating therein that the policy was an agriculture package policy. Furthermore, it has come on record that the tractor in question was in use for other than

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agriculture purpose. The owner/objector did not lead evidence to contradict the above facts; therefore, the finding arrived at by the Tribunal on the basis of evidence on record that the tractor in question was used for other than agriculture purpose in breach of policy needs no interference. The cross-objection being sans merit deserves to be and is hereby dismissed.

9. In the result the appeal by the claimant is allowed to the extent above and the cross-objection by the owner is dismissed; however, no costs.

Appeal allowed.

I.L.R. [2010] M. P., 1001
APPELLATE CIVIL
Before Mr. Justice Alok Aradhe
 4 February, 2010*

LAND ACQUISITION OFFICER

...Appellant

Vs.

JEET SINGH & anr.

... Respondents

A. Land Acquisition Act (1 of 1894), Section 23 - Market value - Agricultural land acquired - Reference Court held that land having potentiality of being put to residential use - Reference Court assess the market value of land Rs. 2 lacs on the basis of Index Register of relevant period containing sales of adjoining land - Held - Reference Court ought to have deducted 30% on account of development charges while determining the market value of the land. (Para 12)

क. भूमि अर्जन अधिनियम (1894 का 1), धारा 23 - बाजार मूल्य - कृषि भूमि अर्जित की गयी - निर्देश न्यायालय ने अभिनिर्धारित किया कि भूमि आवासिक उपयोग किये जाने की सामर्थ्य रखती है - निर्देश न्यायालय ने सुसंगत कालावधि के सूचक रजिस्टर, जिसमें लगी हुई भूमि के विक्रय अन्तर्विष्ट हैं, के आधार पर भूमि का बाजार मूल्य 2 लाख रुपये निर्धारित किया - अभिनिर्धारित - निर्देश न्यायालय को भूमि का बाजार मूल्य अवधारित करते समय विकास प्रभार मद्दे 30 प्रतिशत की कटौती करनी चाहिए थी।

B. Land Acquisition Act (1 of 1894), Section 23(1) - Circular issued u/s 48 of Stamp Act for fixing the market value for the purposes of registration bears no relevance to determine the market value u/s 23(1) of the Act. (Para 11)

ख. भूमि अर्जन अधिनियम (1894 का 1), धारा 23(1) - रजिस्ट्रीकरण के प्रयोजन हेतु बाजार मूल्य निश्चित करने के लिए स्टाम्प अधिनियम की धारा 48 के अन्तर्गत जारी परिपत्र इस अधिनियम की धारा 23(1) के अन्तर्गत बाजार मूल्य अवधारित करने के लिए सुसंगत नहीं है।

C. Civil Procedure Code (5 of 1908), Order 41 Rule 33, Land Acquisition Act, 1894, Sections 28 & 34 - Reference Court has not awarded

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interest which is payable to the claimant under various heads - Claimant has not filed an appeal against the decree of Reference Court - Held - Appellate Court may pass any decree or order which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though the appeal is as to part only of the decree and such party or parties may not have filed an appeal - High Court awarded interest as provided u/ss. 28 & 34 of Act. (Para 13)

ग. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 33, भूमि अर्जन अधिनियम, 1894, धाराएँ 28 व 34 - निर्देश न्यायालय ने वह ब्याज अधिनिर्णीत नहीं किया जो दावेदार को विभिन्न शीर्षों के अन्तर्गत देय है - दावेदार ने निर्देश न्यायालय की डिक्री के विरुद्ध अपील फाइल नहीं की - अभिनिर्धारित - अपील न्यायालय सभी पक्षकारों या उनमें से किसी के भी पक्ष में कोई ऐसी डिक्री या आदेश पारित कर सकता है जो किया जाना चाहिए था, और यथास्थिति ऐसा अतिरिक्त आदेश या डिक्री कर सकता है यद्यपि अपील डिक्री के केवल भाग के बारे में हो और ऐसे पक्षकार या पक्षकारों ने कोई भी अपील फाइल न की हो - उच्च न्यायालय ने अधिनियम की धारा 28 और 34 के अन्तर्गत उपबंधित ब्याज अधिनिर्णीत किया।

Cases referred :

1995(II) MPWN 189, 2005(2) MPLJ 5, 1977(II) MPWN 373, (1991) 4 SCC 195, (2000) 6 SCC 326, (2008) 2 SCC 568, (1998) 7 SCC 327, 2003(3) MPLJ 514, (1995) 5 SCC 683.

Sudesh Verma, G.A., for the appellant/State.

A.S. Jha with B.M. Prasad, for the respondents.

J U D G M E N T

ALOK ARADHE, J. :- This appeal under Section 54 of the Land Acquisition Act, 1984 has been filed by the State Government being aggrieved by the order dated 10.4.1992 passed by 1st Additional Judge to the Court of District Judge, Seoni in M.J.C. No.12/90.

2. Admittedly, original respondent Nanhelal was owner of land bearing survey No.265 admeasuring 0.251 hectares situate in village Lonia, Tahsil and District Seoni. Aforesaid lands were acquired by the State Government for construction of road from Seoni to Mungwani. Proceedings under the Land Acquisition Act (hereinafter referred to as the "Act") were initiated for acquisition of land belonging to original respondent. An award was passed on 19.4.1989 by which Land Acquisition Officer awarded a sum of Rs.1256/- as compensation on account of value of the land. An amount of Rs.377/- was awarded as 30% solatium and an amount of Rs.83/- was awarded by way of interest.

3. Original respondent being dissatisfied with the quantum of compensation awarded to him, filed an application under Section 18 of the Act for making a reference to the Court. Aforesaid application was allowed and reference was registered as M.J.C. No.12/90.

LAND ACQUISITION OFFICER Vs. JEET SINGH

4. Claimant submitted a statement of claim in which inter-alia it was pointed out that the land which was acquired is situate within the municipal limits of Municipal Corporation, Seoni. In close vicinity of the land which has been acquired, Govt. Post-Degree College and Govt. Higher Secondary School are situate. The adjoining lands are being used for residential purposes and new residential colonies are coming up around the land which has been acquired. It was further pleaded that compensation at the rate of Rs.800/- per RA has been fixed by the Collector in respect of the adjoining lands. Accordingly, the deceased respondent claimed compensation on account of market value of the land @ Rs.800/- per RA and claimed 30% solatium on the market value of the land. Deceased respondent further claimed interest @ 15% from the year 1982, as possession of the land was taken in the year 1982. Deceased respondent in support of his claim examined himself as well as Sub-Registrar namely Gulab Singh.

5. It is pertinent to mention here that appellant/State did not adduce any evidence in rebuttal of the claim made by the deceased respondent.

6. Trial Court on the basis of material available on record, held that market value of the land on the date of notification under Section 4(1) of the Act was Rs.800/- per RA and the amount of compensation on account of market value of the land was quantified at Rs.2 Lacs. Trial Court further directed that from the date of award till date of order, the amount of compensation shall carry interest @ 9% and thereafter, @ 12% till payment is made.

7. Shri Sudesh Verma, learned Govt. Advocate, appearing on behalf of the appellant/State has contended that trial Court grossly erred in taking into account the price which was fixed by the Collector for stamp purposes for determining the market value of the land. In support of aforesaid proposition, counsel has placed reliance on a decision of Supreme Court reported in *Painder Singh Vs. Union of India*, 1995 (2) M.P. Weekly Notes, note 189. Placing reliance in *Ahad Brothers Vs. State of M.P. and another*, 2005(2) M.P.L.J. 5, learned counsel has contended that 30% ought to have been deducted on account of developmental charges, as the land had potentiality of being put to residential use. The Court grossly erred in not deducting any amount towards developmental charges. Learned counsel has also referred to a Division Bench decision of this Court in *S.S. Rajendra Kumar and others Vs. Collector, Jabalpur*, 1977(2) M.P. Weekly Notes note 373, in support of the contention that if market value of the land is to be assessed in per sq.ft. Basis, then 25% of the area must be deducted from the total area.

8. Shri A.S. Jha, learned senior counsel per contra has argued that the order passed by the Reference Court is just and proper and does not call for any interference. He has further contended that trial Court has not awarded interest to the land owner, which is permissible under statutory heads.

9. It is well settled in law that when the Courts are required to assess the

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market value of the land in compulsory acquisition, best evidence of value of property is the sale of acquired land to which claimant himself is a party and in its absence, the sales of neighbouring lands can also be taken into account. The Court is required to adopt a pragmatic approach and should also take into account the potentialities of the land. It is well settled that market value of property has to be determined having due regard to its existing advantages. The object of entire exercise is to arrive at a fair and reasonable market value of the land and in that process, at times, some guess work is involved. See: *Periyar and Parkeekanni Rubbers Ltd., Vs. State of Kerala*, (1991) 4 SCC 195 and *Executive Director Vs. Sarat Chandra Bisoi and another*, (2000) 6 SCC 326, *Atma Singh Dead through Lrs and Others v. State of Haryana & another*, (2008) 2 SCC 568.

10. From aforesaid proposition of law, the ratio which emerges is that sale transaction in respect of the acquired land to which claimant himself is a party and in its absence the sales of neighbouring land are best piece of evidence. For ascertaining market value of land, potentiality of acquired land should also be taken into consideration.

11. In the backdrop of aforesaid legal position, facts of the case may be adverted to. As has been stated supra, deceased respondent in order to prove his claim examined himself as well as the Sub-Registrar. Claimant in his examination-in-chief clearly stated that the lands which have been acquired are situate within the municipal limits and are situate adjacent to the road. Since 1982, Government has taken possession of the land. He has further stated that the lands which have been acquired are surrounded by residential locality. He has also stated that lands covered under acquisition are earmarked for residential purposes and adjoining lands have been sold on per sq. ft. basis. He has further stated that at the relevant time i.e. in the year 1987-88, market value of the land was Rs.800/- per RA. No challenge has been made to the aforesaid facts in the cross-examination. It is well settled in law that where a witness is not cross-examined on a particular point, his testimony has to be accepted. [See AIR 1965 SC 1179] Since claimant has not been specified the date when possession was taken and has merely stated that possession was taken in the year 1982, therefore, it is reasonable to fix the date for taking over possession as 1.1.1983. Another witness namely Gulab Singh, Sub-Registrar has produced the guidelines of the year 1988-89 as well as index register which has been marked as Ex.A/2 of the year 1987-88 of village Lonia and index register of the year 1987-88 of village Bhairoganj, which contains details of the plots which have been sold prior to issuance of notification under Section 4(1) of the Act. In rebuttal, no evidence has been adduced by the State Government. From perusal of Exs. A/2 and A/3, it is apparent that these documents contain the details of the land which have been sold on various dates in between 3.4.1987 to 19.10.1987. Trial Court has relied on documents Ex.A/2 and A/3 and has come to the conclusion that market value of the land on the date of acquisition

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was Rs.800 per RA. Aforesaid finding is based on material on record. Decision relied on by learned counsel for the appellant reported in *Painder Singh* (supra) has no application to the obtaining factual matrix of the case. In the aforesaid case, Supreme Court has held that circular issued under Section 48 of the Stamp Act for fixing the market value for the purposes of registration bears no relevance to determine the market value under Section 23(1) of the Act. In the instant case, trial Court has relied on index register of the relevant period which contains details of the sales in respect of adjoining land which have taken place prior to issuance of notification under Section 4(1) of the Act. Therefore, trial Court has not committed any illegality in holding that market value of the land was Rs.800/- per RA. Accordingly, contention of the learned counsel for the State that trial Court on the basis of documents Ex.A/2 and A/3 could not have determined the market value of the property, does not deserve acceptance and is rejected.

12. So far as the arguments of the learned counsel for the State that while determining the market value, an amount equivalent to 30% of the developmental charges ought to have been deducted, is concerned, it is noteworthy that Supreme Court in *Ahad Brothers* (supra), 2005(2) MPLJ 5, has held that where an agricultural land which has the potentiality of being put to residential use, is acquired, an amount of 30% should be deducted on account of developmental charges out of amount of compensation. Claimant in para 11 of his deposition has admitted that prior to date of taking possession of land under acquisition it was being used for agricultural purposes. Thus, the trial Court ought to have deducted 30% on account of developmental charges while determining the market value of the land.

13. However, from perusal of order passed by the trial Court, it is apparent that interest which is payable to the land owner under various heads have not been properly awarded. Under Order 41 Rule 33 of C.P.C., the appellate Court may pass any decree or order which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though the appeal is as to part only of the decree and such party or parties may not have filed an appeal. [See: *K.Muthuswami Gounder Vs. N.Palaniappa*, (1998) 7 SCC 327 and Division Bench decision of this Court in 2003 (3) MPLJ 514]. Court is required to award interest as per statutory rates prescribed in the Act. [Refer (1995) 5 SCC 683]. In view of aforesaid enunciation of law by the Supreme Court, I find that claimants are entitled to receive interest under various statutory heads, which has not been awarded to them.

14. It is stated before me by the learned counsel for the parties that by order dated 9.10.2006 passed in Civil Revision No.155/94, this Court has already ordered payment of solatium to land owners. In view of aforesaid, my conclusions are as under:-

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1. Respondents shall be entitled to receive a sum of Rs.1,70,000/- (Rs. One Lac Seventy Thousand) on account of market value after deduction of 30% of the developmental charges.
 2. That possession of land was taken over by State Government on 1.1.1983.
 3. Respondents shall also be entitled to interest as provided under Sections 28 and 34 of the Act.
15. In view of aforesaid discussion, the appeal is allowed in part and the order passed by the Reference Court is modified accordingly. Parties shall bear their respective costs.

Appeal partly allowed.

I.L.R. [2010] M. P., 1006
APPELLATE CRIMINAL
Before Mr. Justice R.C. Mishra
 24 September, 2009*

MANMOHAN

... Appellant

Vs.**STATE OF M.P.**

... Respondent

A. Penal Code (45 of 1860), Section 306 - Abetment to commit suicide
- Law does not require instigation to be in a particular form or that it should only be in words - Instigation may be by conduct - Whether there was any instigation or not is a question to be decided on facts of each case - Instigation must be with reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. (Para 18)

क. दण्ड संहिता (1860 का 45), धारा 306 - आत्महत्या करने का दुष्प्रेरण - विधि यह अपेक्षा नहीं करती कि उकसाहट किसी विशिष्ट स्वरूप की हो या कि वह मात्र शब्दों में हो - उकसाहट आचरण द्वारा भी हो सकती है - क्या कोई उकसाहट थी या नहीं, ऐसा प्रश्न है जिसका विनिश्चय प्रत्येक मामले के तथ्यों के आधार पर किया जाना चाहिए - उकसाहट उस कृत्य के संदर्भ में होनी चाहिए जो उस व्यक्ति द्वारा, जिसे उकसाया जाता है, किया गया हो न कि उस कृत्य के संदर्भ में जो किया जाना संभाव्य था।

B. Penal Code (45 of 1860), Section 306 - Abetment to commit suicide - Husband & wife committed suicide as appellant exploited their daughters sexually and did not permit them to leave his company - Appellant also intimidated them by giving threats to get them and their son beaten by gangsters - Deceased were also in embarrassed position as they had no courage to show their faces to the society - Held - Law does not require instigation to be in a particular form - Instigation may be by conduct - Act of

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abetment attributed to appellant is not to be viewed or tested in isolation - There was proximate and live link between the offending acts of appellant and suicides in question - Appellant guilty of offence u/s 306 IPC - Appeal dismissed. (Paras 18 to 22)

ख. दण्ड संहिता (1860 का 45), धारा 306 - आत्महत्या करने का दुष्प्रेरण - पति और पत्नी ने आत्महत्या कर ली क्योंकि अपीलार्थी ने उनकी पुत्रियों का लैंगिक शोषण किया और उन्हें उसका साथ नहीं छोड़ने दिया - अपीलार्थी ने उन्हें और उनके पुत्र को गुण्डों से पिटवाने की धमकी देकर अभिन्नस्त भी किया - मृतक लज्जित स्थिति में भी थे क्योंकि उनमें समाज को मुँह दिखाने का साहस नहीं था - अभिनिर्धारित - विधि यह अपेक्षा नहीं करती कि उकसाहट विशिष्ट स्वरूप की हो - उकसाहट आचरण द्वारा हो सकती है - अपीलार्थी पर उपारोपित उकसाने के कृत्य पर विचार या परीक्षण एकल रूप से नहीं हो सकता - अपीलार्थी के आपराधिक कृत्य और प्रश्नगत आत्महत्याओं के मध्य निकटवर्ती और सक्रिय सम्बन्ध था - अपीलार्थी भा.द.सं. की धारा 306 के अन्तर्गत अपराध का दोषी - अपील खारिज।

C. Penal Code (45 of 1860), Section 306 - Sentence - Offence took place about 22 years back - Custodial sentence reduced to 7 years from 10 years. (Para 23)

ग. दण्ड संहिता (1860 का 45), धारा 306 - दण्डादेश - अपराध लगभग 22 वर्ष पूर्व घटित हुआ - अभिरक्षा दण्डादेश 10 वर्ष से घटाकर 7 वर्ष किया गया।

Cases referred :

AIR 2000 SC 2798, AIR 1983 SC 753, 1971 J.L.J. SN 80, 1995 MPLJ 458, 1993 MPLJ 729, AIR 2005 SC 1775, AIR 2008 SC 2108, AIR 1989 SC 1661, (2008) 2 SCC 403, 2009 AIR SCW 4421, AIR 1984 SC 1622.

S.C. Datt with Pushpendra Dubey, for the appellant.

Puneet Shrotri, Panel Lawyer, for the respondent/State.

J U D G M E N T

R.C. MISHRA, J. :- This appeal has been preferred against the judgment dated 22/06/1992 passed by First Additional Sessions Judge, East Niwad, Khandwa in S.T. No.112/1987, whereby the appellant was convicted under Section 306 of the IPC and sentenced to undergo R.I. for 10 years and to pay fine of Rs.5000/- and in default, to suffer R.I. for 2 years. By that judgment only, he was acquitted of the charge of the offence under Section 376 of the IPC (on two counts). Admittedly, the State has not preferred an appeal against the order of acquittal.

2. The prosecution story, in short, may be narrated thus-

(i) At the relevant point of time, Kailash Chandra Guru (since deceased), a resident of village Dulhar, was posted as Head Master in Janpad Middle School at Rustampur. He was married to Kuntidevi, who died together with him in the same transaction. In the wedlock, they were blessed with three daughters and two sons.

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Marriage of their eldest daughter namely Manibala was solemnized with Kailashchandra Bhatt (PW10), who was posted as Assistant Surgeon in the Veterinary Department at Unhail, Distt. Ujjain. The prosecutrixs, whose names need not be indicated, are their younger daughters. They shall hereinafter be referred to as 'S' and 'P' correspondingly.

(ii) As the facility of post-middle education was not available at Dulhar/Rustampur, Kailash Chandra Guru (for short 'Kailash') had sent Manibala to Khandwa to pursue her studies there and for her residence, had taken back portion of the appellant's house situated in Khadakpura Ward there. Being similarly placed, her sisters viz. 'S' (PW19) and 'P' (PW20), aged about 20 and 17 years respectively, and younger brother Dharmendra (PW18) were also required to stay at Khandwa to undertake higher education and the same accommodation was also considered suitable for their residence.

(iii) Appellant is a bachelor and journalist by profession. During their stay in the back portion of his house, he was able to persuade 'S' and 'P' to cook food for him also. Thereafter, taking undue advantage of their young ages, he started making advances by touching their bodies and ultimately, succeeded in satisfying his lust by subjecting them to sexual intercourse.

(iv) On 10.05.1987 at 11 a.m., both Kailash and Kuntidevi suddenly came to the house of the appellant for the purpose of taking their daughters back to village Dulhar. However, they found both of them lying in obscene and objectionable positions with the appellant in his bed only. They reprimanded the appellant as well as the girls and also asked them to leave the place immediately. This led to a quarrel, in the course of which, the appellant not only belaboured Kailash but also threatened him with dire consequences.

(v) Upon receipt of information about the quarrel, H.S. Dubey (PW14), the In-charge SHO of Kotwali and Sub-Inspector G.S. Kushwaha (PW17) rushed to the appellant's house along with other members of the police force. However, he was able to impress upon them that it was a domestic matter that did not require police action. Being unsuccessful in taking their unmarried daughters back to the village, both Kailash and Kunti, feeling humiliated, frustrated and disgusted, returned home. On the following day only, they jointly committed suicide by consuming pesticide known as dimecron in their house at village Dulhar. Before doing so, the

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parents disclosed the reasons for ending their life in a note (Ex.P-15), that was written by Kailash and signed by both wherein they emphatically declared that the appellant as well as their misguided daughters were responsible for driving them to take the extreme step.

(vi) Accordingly, *mergs*. (death cases) were registered. During inquiry, the dying declaration (Ex.P-15) written on a rice paper, two porcelain cups containing violet coloured fluid, 100 ml bottle of dimecrone and one maroon cotton handkerchief were seized from the spot.

(vii) After inquest proceedings, the dead bodies were sent to Main Hospital at Khandwa for post-mortem. Dr. C.K. Sharma (PW11) and Dr. D.R. Bhatiya (PW13), who conducted the autopsies of the bodies of Kailash and Kunti respectively, opined that cause of death in each case was coma due to poisoning. However, for confirmation, they also preserved viscera and fingertips of the deceased for chemical analysis.

(viii) In the light of the findings of the inquiry, Rama Shankar Yadav (PW22), the then SHO of P.S. Pandhana registered a case, under Section 306 of the IPC, by scribing the FIR. During investigation, the following documents containing standard handwriting of the deceased and signatures of both of them were seized -

- (a) Daily information diary (Art. 'A') maintained by Kailash as Head Master of the School during the period from 27.09.1984 to 02.04.1987.
- (b) Register (Art. 'B') containing administrative orders passed by Kailash during the period from 15.08.1982 to 27.04.1987.
- (c) *Bhu Adhikar and Rin Pustika* (Art. 'C') containing signatures of Kunti.
- (d) Leave applications (Ex.P-16 and P-17) written by Kailash on 05.02.1987 and 02.03.1987.

The seized documents along with the suicide note were sent to the Additional State Examiner of Questioned Document (for short "ASEQD"), Bhopal. The Handwriting Expert H.S. Tomar (PW16), who examined the dying declaration with reference to the standard handwriting of Kailash and signatures of both the deceaseds, opined that it was scribed by Kailash and signed by him as well as by Kunti.

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(ix) Viscera along with the seized cups, plastic bottle and fingertips were forwarded to FSL, Sagar for analysis. The chemical examiner's report indicated that all the articles including viscera were found to contain organo-phosphorus pesticide known as dimecrone.

(x) After due investigation, charge-sheet for the offences punishable under Sections 306, 376, 342 and 506 of the IPC was submitted in the Court of JMFC, Khandwa who committed the case to the Court of Session for trial.

3. The appellant abjured the guilt and pleaded false implication. To substantiate the plea, following documents were tendered in evidence

(i) Copy of a joint exculpatory affidavit (Ex.D-7) purported to have been sworn in by both the prosecutrixs on 12.05.1987.

(ii) An inland letter (Ex.D-8), said to have been written by 'P' (PW20) on 22.06.1987 to his lover Sudhakar Savant, suggesting that she had to incriminate the appellant in view of the fact that despite being unmarried, she was carrying pregnancy of 3 months.

(iii) A photograph of Sudhakar Savant (Ex.D-6).

Since 'P' had denied authorship of the letter (Ex.D-8), an handwriting expert namely Chandrashekhar Sarvate (DW1) was also summoned to establish that it was written by her only.

4. The prosecution sought to prove the charges by examining as many as 22 witnesses including the prosecutrixs 'S' and 'P' (respectively PW19 and PW20), their brothers Dharmendra (PW18) & Rajendra (PW21) and the medical experts.

5. Upon a critical appraisal of the entire evidence on record, learned trial Judge, for the reasons recorded in the impugned judgment, while holding that both the prosecutrixs had persistently been subjected to sexual exploitation by the appellant, proceeded to acquit him of the offence of rape as each one of the victims was found to be above 16 years of age. However, he further concluded that the guilt of the appellant for abetting suicide of their parents was proved beyond a reasonable doubt.

6. Legality and propriety of the impugned conviction have been challenged on the following grounds -

(i) The allegation, as incorporated in the dying declaration (Ex. P-15) that the deceaseds had found the appellant committing sexual acts with their daughters, who were lying naked on his cot during daytime, was apparently unnatural and improbable and, therefore, it could not be acted upon as truthful.

(ii) The defence was able to prove that in the inland letter (Ex.

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D-8) written by 'P' (PW20), it was clearly confessed that the appellant was falsely implicated with a view to saving her own prestige.

(iii) Even if the contents of the suicide note are taken at their face value and accepted in their entirety, the offence under Section 306 of the IPC would not be made out.

In response, learned Panel Lawyer, while making reference to the incriminating pieces of evidence, has submitted that the conviction was justified.

7. Before entering into merits of the rival contentions in a right perspective, it would be necessary to first advert to the evidence of the prosecutrixs 'S' and 'P' (PW19 and PW20 respectively) regarding their alleged sexual exploitation at the hands of the appellant despite the fact that finding of not guilty has attained finality. Both 'P' and 'S' had vividly described as to how the appellant, after persuading them to maintain a joint kitchen, had been able to first make advances and then subject both of them persistently to sexual intercourse. Their evidence drew ample corroboration from the medical opinion given by Dr. Smt. Leela Joshi (PW2) to the effect that each one of them was found to be accustomed to coition. According to the medical expert, she not only referred the girls, apparently aged about 20 and 18 years, to the radiologist for age determination but also advised urine examination for confirmation of 'P's suspected pregnancy. Dr. R.P. Gupta (PW1) testified that in the ossification tests, age of each one of the prosecutrixs was ascertained as above 19 years:

8. While dealing with the appeal against conviction under Section 306, the Court is not required to enter into the merits of the reasons for recording finding of not guilty in respect of offence under Section 376 of the IPC. Still, it may be observed that the acquittal of the appellant was not justified in the peculiar facts and circumstances of the case establishing that submission of body by each one of the prosecutrixs, who were residing in his house for a preceding period of nearly 3 years, under fear of being blackmailed could not be construed as their consent for the sexual acts (See. *State of H.P. v. Mange Ram* AIR 2000 SC 2798). Further, in *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, AIR 1983 SC 753, the Apex Court had enumerated the reasons to fortify the observation that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as is relevant to the western society. The relevant extract containing reasons applicable to an unmarried prosecutrix may be reproduced as under

"(5) If she is unmarried, she would apprehend all it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family, (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself,

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(7) The fear of being taunted by others will always haunt her, (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo, (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy, (10) The parents of an unmarried girl would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour, (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence, (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, act as a deterrent."

9. Defence witness C.S. Sharwate reaffirmed the opinion as recorded in the report (Ex.D-21) that the letter bearing date 22.06.1987 was written by 'P' only. Contents of the prosecutrix's joint affidavit-dated 12.05.1987 (a photocopy of which was placed on record as Ex.D-7) also suggested that the appellant was being defamed by the members of the rival group as the person responsible for suicidal deaths of their parents. However, these documents, which were brought into existence, with a view to exonerating the appellant from penal consequences of the allegations recorded in the dying declaration, further suggested that the prosecutrix continued to be under his undue influence. The prosecution evidence comprising testimony of the prosecutrix and supportive medical opinion was, therefore, rightly considered sufficient to establish that the appellant had been persistently subjecting them to sexual exploitation.

10. Coming to the other evidence on record, it may be seen that both 'S' (PW19) and 'P' (PW20) candidly admitted that at the time when their parents entered into the appellant's house, they were sitting on the cot wherein the appellant was lying. They further acknowledged that, at this point of time, their younger brother Dharmendra (PW18) was in the bathroom. Although, they denied the fact that while being subjected to sexual intercourse by the appellant, they were lying in the bed in naked condition but, this denial did not assume much significance as their act of sharing a common bed with the appellant, by itself, was apparently more than enough to offend their parents.

11. 'S' and 'P' categorically asserted that, on being reprimanded by their parents, the appellant started quarreling with them. According to them, in the course of altercation, the appellant also assaulted Kailash. Their younger brothers viz. Rajendra (PW21), the companion of their parents, and Dharmendra (PW18), who

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urther stated that the appellant not only slapped his father repeatedly but had also threatened to get him removed from the Govt. Service and beaten by Hukum and Abdul. Evidence of these progeaies of the deceaseds did not suffer from any basic inconsistency. Further, it also drew adequate support from the statements of police officers namely H.S. Dubey (PW14) and G.S. Kushwaha (PW17). They clearly deposed that, on being informed about the quarrel in the house of the appellant, they had proceeded along with police force to the spot but had to return without taking any action as the appellant was able to convince them that it was a domestic matter. The non-corroborative evidence of Aziz Khan (PW6), colleague of the appellant, does not assume any importance. Thus, the prosecution was also able to prove, beyond a reasonable doubt, the factum of quarrel between Kailash and the appellant on the day preceding the suicides.

12. The fact that the dying declaration (Ex.P-15) was scribed by Kailash and signed by him as well as by his wife Kunti was not seriously disputed. The Handwriting Expert H.S. Tomar (PW16) also opined that the standard handwriting and signatures of Kailash and those of Kunti reflected a common authorship. His report (Ex.P-28) running into 7 pages and the documents examined by him and their photographs marked as Exhibits P-15, P-16, P-17 and P-29 and P-150 were tendered in evidence. This apart, Krishnarao Upadhyay (PW5), the Head Master of Primary School in Rustampur, also came forward to prove that the documents (Ex.P-15 to P-17) were written by Kailash only and this assertion was not challenged in the cross-examination.

13. To sum up, the following finding of facts as recorded by learned trial Judge do not suffer from any serious infirmity -

(i) The appellant had subjected the prosecutrixs 'P' and 'S', the unmarried daughters of Kailash and Kunti to persistent sexual exploitation.

(ii) On 10.05.1987, finding that the appellant indulged in objectionable activities with their daughters, Kailash and Kunti not only scolded him but also asked the girls to leave his company but in the course of altercation thus ensued, the appellant also assaulted Kailash.

(iii) On being informed about the commotion in the appellant's house, the police force arrived there but was sent back by the appellant, who also did not allow Kailash and Kunti to take the prosecutrixs along with them.

(iv) On the following day only i.e. 11.05.1987, Kailash and Kunti committed suicide by consuming dimecrone after signing the dying declaration (Ex.P-15) that was scribed by Kailash only.

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14. Reflecting all these facts in the dying declaration (Ex.P-15), the declarants had given the following reasons for ending their life –

- (i) They had seen the appellant's committing misdeeds with their unmarried daughters who were lying naked in his bed.
- (ii) As they asked 'S' and 'P' to immediately leave his house, the appellant started (a) quarreling and (b) blustering that being a journalist, he would be able to get them and their son Dharmendra imprisoned as well as beaten by Hukum Pahalwan and Abdul etc.
- (iii) Had the appellant succeeded in getting Kailash convicted in a criminal case, he would have been dismissed from the Govt. Service.
- (iv) Being reputed members of the society and persons of self-respect and dignity, they were unable to bear the impact of the mishap and were not in a position to show their faces to the society.
- (v) The appellant as well as their daughters, who were misled by him only, were responsible for their untimely death.

15. Learned Senior Counsel has strenuously contended that in the light of this factual scenario, the offence of abetment of suicide would not be made out in absence of evidence to indicate that the appellant had taken any positive step to goad or urge forward, provoke, incite or encourage Kailash and Kuntidevi to commit suicide. To buttress the contention, reference has been made to the following decisions –

- (i) *Panchram & Samailal v. State of M.P.* 1971 J.L.J. SN 80
- (ii) *Vedprakash Tarachand Bhaiji v. State of M.P.* 1995 MPLJ 458
- (iii) *Deepak Raghunathrao Shohle @ Shole v. State of M.P.* 1993 MPLJ 729
- (iv) *Netai Dutta v. State of W.B.* AIR 2005 SC 1775
- (v) *Sohan Raj Sharma v. State of Haryana* AIR 2008 SC 2108

16. Section 107 IPC defines abetment of a thing. Accordingly, a person abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. In absence of any allegation as to conspiracy or intentional aiding, the point to be considered is as to whether the appellant instigated Kailash and Kunti to commit suicide.

17. In *Panchram & Samailal's case* (supra), the only evidence relied upon by the prosecution was that Samailal was in love with another girl and did not desire that his wife (since deceased) should live with him and a single Bench of this Court proceeded to acquit the accused observing that there was absolutely nothing

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to show as to what, if any, positive steps were taken him to induce his wife to commit suicide whereas in *Vedprakash's case* (above), it was observed that mere goading to refund or repay the amount advanced as loan would not amount to instigation. *Deepak's case* (ibid) is cited as an authority on the point that outraging modesty of an unmarried girl would not constitute any positive act to abet suicide. In *Netai Dutta's case*, there was no averment in alleged suicide note that accused had caused any harm to deceased or was in any way responsible for delay in paying salary to him and further no reference of any act or incidence in alleged suicide note whereby accused has committed any wilful act or omission or intentionally aided or instigated deceased in committing act of suicide was made. In such a situation, it was held that it could not be said that accused had in any way instigated deceased to commit suicide or he was responsible for suicide of deceased. In *Sohan Raj's case* (supra) wife committed suicide after giving poison to her children and leaving a suicide note wherein her husband was described as sexual pervert and impotent person who was trying to defame her. Against this backdrop, it was held that husband's cruel or insulting behaviour cannot be taken to be an act of abetting suicide.

18. However, the facts and circumstances of the case are clearly distinguishable. The dying declaration (Ex.P-15) categorically reflected that the parents of the unmarried girls had taken decision to commit suicide as they were unable to bear the impact of these acts attributable to the appellant –

(a) exploiting their daughters sexually and not permitting them to leave his company despite their insistence; .

(b) intimidating them by giving threats to get them and their son Dharmendra beaten by gangsters namely Hukum and Abdul and also getting Kailash convicted on a concocted charge and removed from Govt. Service.

The suicide note further projected that the appellant and their daughters 'S' and 'M' had put them in such an embarrassing situation that they had no courage to show their faces to the society. As explained by *Brij Lal v. Prem Chand* AIR 1989 SC 1661, as to what would constitute instigation for the commission of an offence would depend upon the facts of each case. Therefore, in order to decide whether a person has abetted by instigation, the commission of an offence or not, the act of abetment has to be judged in the conspectus of the entire evidence on record with reference to contemporary standards of the Indian society. Law does not require instigation to be in a particular form or that it should only be in words. The instigation may be by conduct. Whether there was instigation or not is a question to be decided on the facts of each case. It is not necessary in law for the prosecution to prove that the actual operative cause in the mind of the person abetting was instigation and nothing else, so long as there was instigation and the

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offence has been committed or the offence would have been committed if the person committing the act had the same knowledge and intention as the abettor. The instigation must be with reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated.

19. In this view of the matter, the act of abetment attributed to the accused/appellant is not to be viewed or tested in isolation. In an identical situation, taking note of the fact that the suicide note clearly referred to the background in which the victim took the extreme step of taking away his own life by committing suicide, the Supreme Court Apex Court in *Didigam Bikshapathi v. State of A.P.*, (2008) 2 SCC 403, proceeded to distinguish the decision in *Netai Dutta's* on facts.

20. This apart, in a yet another decision rendered in *Dammu Sreenu v. State of Andhra Pradesh* 2009 AIR SCW 4421, conviction of the accused/appellant who, admittedly, had illicit relations with wife of deceased and had taken her in presence of close relatives of deceased, for the offence of abetment of suicide was held to be justified as there was proximity and nexus between his conduct and behaviour and the suicide. In the instant case also, there was a proximate and live link between the offending acts of the appellant and the suicides in question as the deceaseds were made to understand that any further attempt to extricate their unmarried daughters from the clutches of the appellant would make their life more miserable. Besides this, they had also realized that the police would not take any action against the appellant who happened to be a journalist of repute.

21. Placing reliance on the decision of the Supreme Court in *Sharad Biridhichand Sarda v. State of Maharashtra* AIR 1984 SC 1622, learned Senior Counsel still submitted that learned trial Judge has failed to consider the psychological aspects of the personalities of the deceaseds to find as to whether they had tendency to commit suicide. According to him, the contents and texture of the dying declaration (Ex.P-15) amply suggested that both Kailash and his wife Kunti were extremely distressed and depressed. However, fact of the matter is that nothing could be brought in the cross-examination of their daughters 'S' and 'P', sons Dharmendra and Rajendra and son-in-law Kailashchandra Bhatt that any one of the deceaseds had suffered from propensity to commit suicide. Further, the contents of the dying declaration clearly indicated that they were in a sound mental condition.

22. In the face of overwhelming incriminating evidence on record and the well-settled position of law on the point, learned trial Judge did not commit any illegality in convicting the appellant for the offence of abetment of suicide. Thus, the conviction in question deserves to be maintained.

23. Coming to the question of sentence, it may be seen that a considerable period of 22 years has elapsed after the incident in question. It is also true that the appellant had gone through the ordeal of a trial and his appeal before this Court

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that has unfortunately remained pending for a considerable period of time. However, taking into consideration the nature of offence, their magnitude and corresponding social impact, the delay in disposal of the appeal cannot be considered as mitigating circumstance to restrict the term of imprisonment to the period already undergone by the appellant, which is nearly 2 months. Interests of justice would be met if the term of custodial sentence is reduced to 7 years.

24. In the result, the appeal is allowed in part. The impugned conviction and consequent sentence of fine passed against the appellant are hereby affirmed. However, the term of the sentence of imprisonment is reduced from 10 years to 7 years.

25. Appellant is on bail. He is directed to surrender to his bail bonds before the trial Court on or before 17.11.2009 for being committed to custody for undergoing remaining part of the sentence.

Appeal partly allowed.

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MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice R.C. Mishra
 7 January, 2010*

SUNDER

... Applicant

Vs.

STATE OF M.P.

... Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 167(2) - Imprisonment for life or imprisonment for a term of not less than ten years - 'Offence punishable with imprisonment for a term of not less than 10 years' in Cl. (i) of proviso (a) to S. 167(2) connotes the offence for which imprisonment is for clear period of 10 years or more - Offence of robbery (not committed on highway between sunset and sunrise) punishable with R.I. for a term which may extend to 10 years - Maximum period of detention u/s 167(2) Proviso would be 60 days and not 90 days - Application allowed. (Paras 8 to 10)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2) - आजीवन कारावास या ऐसी अवधि का कारावास जो दस वर्ष से कम नहीं है - धारा 167(2) के परन्तुक (ए) के खण्ड (i) में दिया 'ऐसी अवधि के कारावास से दण्डनीय अपराध जो दस वर्ष से कम नहीं है', उस अपराध का संकेत करता है जिसके लिए कारावास 10 वर्ष या उससे अधिक की स्पष्ट कालावधि के लिए है - लूट का अपराध (जो राजमार्ग पर सूर्यास्त और सूर्योदय के बीच नहीं किया गया) कठोर कारावास, जो 10 वर्ष की अवधि तक विस्तारित हो सकेगा, से दण्डनीय है - धारा 167(2) के परन्तुक के अन्तर्गत निरोध की अधिकतम अवधि 60 दिन होगी न कि 90 दिन - आवेदन मंजूर।

SUNDER Vs. STATE OF M.P.**Cases referred :**

AIR 2001 SC 2369

Shashank Upadhyaya, for the applicant.*G.S. Thakur*, P.L., for the non-applicant/State.**ORDER****R.C. MISHRA, J. :-**Arguments heard.

This is an application under proviso to sub-Section (2) of Section 167 (for short 'the proviso') read with S.439 of the Code of Criminal Procedure (for brevity 'the Code').

2. The applicant was arrested on 28.08.2009 in connection with Crime No.25/2009 registered at P.S. Mohangarh, Distt. Tikamgarh, initially, in respect of the offence punishable under Section 392 of the IPC.

3. Allegations against the applicant, in short, are that on 28.08.2009 at 9 a.m., he and his brother Sunder were conjointly involved in a robbery, in the course of which, after putting complainant Rambihari under a fear of death by placing a katta on his chest, they had relieved him of a cash amount of Rs.7,000/- and a gold chain.

4. After expiry of 60 days, the applicant claimed compulsive release on bail under the proviso by filing an application on 29.10.2009. However, the application was rejected by Judicial Magistrate First Class vide order-dated 30.10.2009 on the ground that charge-sheet reflecting commission of the offences under Sections 392 and 397 read with S.34 of the IPC, could be filed within the prescribed period of 90 days as S. 397 has to be read with S.394 that carries life imprisonment. His application moved an application under Section 439 of the Code for grant of bail was rejected by learned Sessions Judge on 05.11.2009 for the reason that the applicant has a consistent criminal record to his credit. However, while doing so, he also approved the view taken by learned JMFC that the applicant was not entitled to release on bail under the proviso.

5. In the light of pronouncement of the Supreme Court in *Uday Mohanlal Acharya v. State of Maharashtra* (2001) 5 SCC 453, the scope and effect of the proviso has already been discussed by this Court in *Mahesh v. State of M.P.* 2008 (3) MPHT 47.

6. The short question that arises for consideration is as to whether the case of the applicant was covered by the proviso.

7. For a ready reference, provision of sub-Section (2) of Section 167 of the Code may be reproduced as under -

167. Procedure when investigation cannot be completed in twenty-four hours.

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(1)

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

[(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) Sixty days, where the investigation relates to any other offence,

And, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b)

8. At the outset, it may be observed that since no injury was caused to the complainant, Section 394 of the IPC had no application to the facts of the case. Admittedly, the charge-sheet for the offences under Sections 392 and 397 read with 34 of the IPC was submitted on 30.10.2009 i.e. after expiry of period of 60 days from the date of the order of remand of the applicant to custody. The offence under Section 392 of the IPC, if robbery is not committed on the high-way between sunset and sunrise, is punishable with rigorous imprisonment for a term, which may extend to 10 years and Section 397 does not create any offence but only prescribes minimum custodial sentence for aggravated forms of robbery and dacoity.

9. As explained by the Apex Court in *Rajeev Chaudhary v. State (N.C.T.) of*

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Delhi AIR 2001 SC 2369, expression 'offence punishable with imprisonment for a term of not less than 10 years' in Cl. (i) of Proviso (a) to S.167(2) connotes the offence for which imprisonment is for clear period of 10 years or more.

10. Accordingly, learned Magistrate committed a serious illegality in declining to release the applicant under the proviso on the ground that the maximum period of detention prescribed for was 90 days. The Sessions Judge has also completely misdirected himself while concurring with the reasoning assigned by the Magistrate. He ought to have directed release of the applicant in terms of the mandate of the proviso.

11. Taking into consideration the nature of allegations and other facts and circumstances of the case including his antecedents, I am of the view the applicant deserves to be enlarged on bail on comparatively stringent conditions.

12. It is, therefore, directed that applicant Sundar shall be released on furnishing a personal bond in the sum of Rs.40,000/- with two solvent and local sureties of Rs.20,000/- each to the satisfaction of CJM, Tikamgarh for his appearance during committal proceedings as well as during trial.

13. Copy of this order be forwarded to S.P. Tikamgarh for initiating necessary departmental action against the officer responsible for delay in filing the charge-sheet leading to compulsive release of the applicant, who has a chequered history to his credit, on bail, of course, after giving him opportunity of being heard.

C.C. as per rules.

Order accordingly